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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 851.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, PLAINTIFF IN ERROR,

vs.

THOMAS P. BEAL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

FILED MAY 24, 1884.

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Petition.

1 Circuit Court of the United States for the District of Kansas.

THOS. P. BEAL, Pl't'ff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Def't.

The petition of the plaintiff above-named respectfully shows:

That said plaintiff is a citizen of the State of Massachusetts and resides at Boston in said State:

That the county of Anderson in the State of Kansas is a municipal corporation created and existing under and by virtue of the laws of said State, and as such is authorized to sue and is subject to be sued under and by the name of The Board of County Commissioners of the County of Anderson.

2 And for a cause of action said plaintiff alleges that on the first day of January, 1870, at Garnett, in said county and State, said county of Anderson made and issued its certain bond, dated on the day aforesaid, whereby it acknowledged itself to owe and promised to pay to the bearer thereof one thousand dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, with interest at the rate of seven per cent. per annum, payable annually, on the first day of January of each year, on the surrender of the coupons thereto attached; which said bond recited that it was executed and issued under the provisions of, and in conformity to, an act of the Legislature of the State of Kansas, approved February 26, 1866, entitled "An act to amend an act entitled An act to authorize counties and cities to issue bonds to railroad companies," approved February 10, 1865, in pursuance to the vote of the electors of Anderson county, of September 13, 1869.

That said bond was made and issued in payment of a subscription theretofore made by said county to the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company, and in order to distinguish it from others of like character was marked No. 21.

That afterwards, and on or about the 27th day of March, 1872, said bond was duly registered in the office of the auditor of the State of Kansas; that as each coupon for such annual interest falling due prior to January 1, 1881, matured, the same was paid by the officers of the county, with the proceeds of a tax levied and collected each year by said county, from its tax-payers for that purpose.

That among the coupons so attached to said bond was one made by said county, whereby it promised to pay to the Leavenworth, Lawrence and Galveston Railroad Company, or bearer, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, on the 1st day of January, 1881, seventy dollars, being the annual interest due on said bond No. 21, so issued as aforesaid, a copy of which said bond, coupon, and certificate of its registry endorsed thereon by the

auditor of State, except as to numbers and amounts, is hereunto annexed, marked Exhibit "A," and made a part of this petition.

That before said coupon by its terms became due and payable it came to and for value became the property of this plaintiff, who ever since has been and still is the lawful owner and holder thereof.

That when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein, and in said bond mentioned, and payment demanded, which was refused.

That defendant has not paid said coupon, nor any part thereof, but is indebted to plaintiff therefor in the sum of seventy dollars, with interest from the 1st day of January, 1881.

And for a second and further cause of action said plaintiff alleges that on the first day of January, 1870, at Garnett, in said county and State, said county of Anderson made and issued its certain bond, dated on the day aforesaid, whereby it acknowledged itself to owe, and promised to pay to the bearer thereof, one thousand dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, with interest at the rate of seven per cent. per annum, payable annually on the first day of January of each year, on the surrender of the coupons thereto attached; which said bond recited that it was executed and issued under the provisions of and in conformity to an act of the Legislature of the State of Kansas, approved February 26, 1866, entitled "An act to amend an act entitled An act to authorize counties and cities to issue bonds to railroad companies," approved February 10, 1865, and in pursuance to the vote of the electors of Anderson county of September 13, 1869.

That said bond was made and issued in payment of a subscription theretofore made by said county to the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company, and in order to distinguish it from others of like character was marked No. 22.

That afterwards, and on or about the 27th day of March, 1872, said bond was duly registered in the office of the auditor of the State of Kansas; that as each coupon for such annual interest falling due prior to January 1, 1881, matured, the same was paid by the officers of the county with the proceeds of a tax levied and collected each year by said county from its tax-payers for that purpose.

That among the coupons so attached to said bond was one made by said county, whereby it promised to pay to the Leavenworth, Lawrence and Galveston Railroad Company, or bearer, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, on the 1st day of January, 1881, seventy dollars, being the annual interest due on said bond No. 22, so issued as aforesaid, a copy of which said bond, coupon, and certificate of its registry endorsed thereon by the auditor of State, except as to numbers and amounts, is hereunto annexed, marked Exhibit "A," and made a part of this petition.

That before said coupon by its terms became due and payable

it came to and for value became the property of this plaintiff, who ever since has been, and still is, the lawful owner and holder thereof.

That when said coupon by its terms became due and payable the same was duly presented at the place of payment therein, and in said bond mentioned, and payment demanded, which was refused.

That defendant has not paid said coupon, nor any part thereof, but is indebted to plaintiff therefor in the sum of seventy dollars, with interest from the 1st day of January, 1881.

[Here follow 178 other like counts, each upon a separate and like coupon, except number and time of maturity. Omitted in printing. See stipulation of counsel, p. 221.]

92 Wherefore plaintiff prays judgment against said defendant for twelve thousand six hundred dollars, with interest on sixty-three hundred dollars from the first day of January, 1881, and on sixty-three hundred dollars from January 1, 1882, at the rate of seven per cent per annum, together with the costs of this action.

PRATT, BRUMBACK & FERREY,
Att'ys for Pl'ff.

EXHIBIT "A."

County of Anderson, $1,000.

United States of America, State of Kansas.

Bond.

Know all men by these presents, that the county of Anderson acknowledges to owe and promises to pay to Leavenworth, Lawrence & Galveston Railroad Co., or bearer, one thousand dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan & Trust Co. Bank, in the city of New York, with interest at the rate of seven per centum per annum, payable annually on the first day of January in each year on the surrender of the annexed coupons as they severally become due.

This bond is executed and issued under the provisions of and in conformity to an act of the Legislature of the State of Kansas, approved February 26th, 1866, entitled "An act to amend an act entitled an act to authorize counties and cities to issue bonds to railroad companies, approved February 10th, 1865," and in pursuance to the vote of the electors of Anderson county of Sept. 13th, 1869.

In testimony whereof, The Board of County Commissioners of the said County of Anderson caused these presents to be signed by the chairman of said board and by the clerk of the county, and to be sealed with the seal of said county, and to be registered by the treasurer of said county.

Dated January 1st, 1870.

[SEAL.]

H. CARENDER, *Chairman.*
J. H. WILLIAMS, *Clerk.*

A. SIMONS, *Treasurer.*

[50-cent U. S. revenue stamp, cancelled.]

Coupon.

No. —. State of Kansas. $70.

The county of Anderson will pay to the Leavenworth, Lawrence & Galveston Railroad Company, or bearer, at the Farmers' Loan & Trust Co.'s Bank, in the city of New York, on the first day of January, A. D. ——, seventy dollars, interest due on their bond.

J. H. WILLIAMS,
County Clerk.

I, A. Thoman, auditor of the State of Kansas, do hereby certify that this bond has been regularly issued; that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the Legislature, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvements, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872.

Witness my hand and official seal, this 27th day of March, 1872.

[SEAL.] A. THOMAN,
Auditor of State.

Endorsed: No. 3785. U. S. circuit court, district of Kansas. Thomas P. Beal *vs.* Board of County Commissioners of the County of Anderson. Petition. Filed March 23, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy.

93 *Precipe.*

Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Pl'ff,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Def't.

To the clerk of said court:

You will please issue a summons for the above-named defendant, directed to the United States marshal for the district of Kansas, returnable according to law.

Plaintiff claims judgment against defendant for twelve thousand six hundred dollars, with interest on $6,300 from January 1st, 1881, and on $6,300 from January 1st, 1882, at the rate of seven per cent. per annum, together with costs of suit.

PRATT, BRUMBACK & FERREY.

Endorsed: No. 3785. U. S. circuit court, district of Kansas. Thomas P. Beal *vs.* Board of County Commissioners of the County of Anderson. Precipe. Filed March 23, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy.

94 In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON.

We enter ourselves security for costs in said case, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court. And in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, we hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated 14th day of March, 1882.

WALLACE PRATT.
W. J. FERREY.

Endorsed: No. 3785. Security for costs. Filed March 23, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy. Approved March 23, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy.

95 Circuit Court of the United States of America.

DISTRICT OF KANSAS, *ss:*

The United States of America to the marshal of the district of Kansas, Greeting:

You are hereby commanded to notify Board of County Commissioners of the County of Anderson that it has been sued by Thomas B. Beal in the circuit court of the United States for the district of Kansas, and that unless it answer by the 22nd day of April, A. D. 1882, the petition of the said Thomas P. Beal against it filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the 2nd day of April, A. D. 1882.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, in said district, this 23 day of March, A. D. 1882.

[SEAL.] A. S. THOMAS, *Clerk*,
By GEO. N. HOLMES, *Deputy*.

95½ Suit brought for the recovery of money. Amount claimed, $12,600, with interest from the — day of ——, A. D. 18—, at the rate of 7 per cent. per annum, on $6,300 from January 1st, 1881, and on $6,300 from January 1st, 1882, together with costs of suit.

PRATT, BRUMBACK & FERREY,
Attorney for Plaintiff.

U. S. Marshal's Return.

DISTRICT OF KANSAS, *ss:*

Received the within writ March the 23rd, 1882, and served same on the within defendant, Board of County Commissioners of the County of Anderson, on the 30 day of March, 1882, at Anderson

county, State & district of Kansas, by delivering to Thomas W. Foster, personally, a true & certified copy of this suit, with all the endorsements therein, the said Thomas W. Foster being then and there the clerk of said defendant and county clerk of said Anderson county, State and district of Kansas.

B. F. SIMPSON,
Marshal, Kansas.

Fees, $7.40.

[Endorsed:] No. 3785. Circuit court of the United States, district of Kansas. Thomas P. Beal *vs.* Board of County Commissioners of the County of Anderson. Summons. Issued March 23, 1882. Returnable April 2, 1882. Filed April 1, 1882. A. S. Thomas, clerk. Pratt, Brumback & Ferrey, attorney for plaintiff.

96 *Demurrer.*

Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant.

And now comes the said defendant, and demurs to the petition of the said Thomas P. Beal, plaintiff, and states the following cause of demurrer thereto, to wit:

That the said petition of the said plaintiff does not state facts sufficient to constitute a cause of action against this defendant and in favor of the said plaintiff.

Wherefore the said defendant, for the cause aforesaid, prays judgment against the said plaintiff for the costs of this suit.

ABRAM BERGEN &
JOHN S. WHITFORD,
Attorneys for Defendant.

Endorsed: No. 3785. Thomas P. Beal *vs.* The Board of County Commissioners of the County of Anderson. Demurrer. Filed April 19, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy. Abram Bergen & John S. Whitford, attorneys for defendant.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 5th day of June, 1882, proceedings were had and appear of record, in words and figures following, to wit:

WEDNESDAY, *June* 7, 1882.

THOS. P. BEAL
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON. } 3585.

It is ordered by the court that the plaintiff have until July 1, 1882,

to amend his petition herein; that the defendant have until August 1, 1882, to answer or demur, and this action is continued.

97 *Amended Petition.*

Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant.

The amended petition of the plaintiff above named respectfully shows:

That said plaintiff is a citizen of the State of Massachusetts, and resides at Boston, in said State.

That the county of Anderson, in the State of Kansas, is, & was, at the dates of the transactions hereinafter mentioned, a municipal corporation created & existing under and by virtue of the laws of said State of Kansas, and as such is authorized to sue and is subject to be sued under and by the name of The Board of County Commissioners of the County of Anderson.

98 And for a cause of action said plaintiff alleges that on the first day of January, 1870, at Garnett, in said county and State, said County of Anderson made and issued its certain bond, dated on the day aforesaid, whereby it acknowledged itself to owe, and promised to pay to the bearer thereof one thousand dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, with interest at the rate of seven per cent. per annum, payable annually on the first day of January of each year, on the surrender of the coupons thereto attached, which said bond erroneously recited that it was executed and issued under the provisions of, and in conformity to, an act of the Legislature of the State of Kansas, approved February 26, 1866, entitled "An act to amend an act entitled An act to authorize counties and cities to issue bonds to railroad companies," approved February 10, 1865; whereas said bond was executed and issued under the provisions of, and in conformity to, the laws of the State of Kansas, then in force, and in pursuance to the vote of the electors of Anderson county, of September 13, 1869, at an election regularly and duly ordered and held for that purpose.

That said bond was made and issued in payment of a subscription theretofore made by said county to the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company, a railroad corporation duly created and existing under the laws of the Territory and State of Kansas, and in order to distinguish it from others of like character was marked No. 21.

That afterwards, and on or about the 27th day of March, 1872, said bond was duly registered in the office of the auditor of the State of Kansas; that as each coupon for such annual interest falling due prior to January 1, 1881, matured, the same was paid by the officers

of the county with the proceeds of a tax levied and collected each year by said county from its tax-payers for that purpose.

That among the coupons so attached to said bond was one made by said county, whereby it promised to pay to the Leavenworth, Lawrence and Galveston Railroad Company, or bearer, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, on the 1st day of January, 1881, seventy dollars, being the annual interest due on said bond No. 21, so issued as aforesaid, a copy of which said bond, coupon, and certificate of its registry endorsed thereon by the auditor of State, except as to numbers and amounts, is hereunto annexed, marked Exhibit "A," and made a part of this petition.

That after said registration, and before said coupon by its terms became due and payable, it came to and for value became the property of this plaintiff, who ever since has been, and still is, the lawful owner and holder thereof.

That when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein and in said bond mentioned, and payment demanded, which was refused.

That the defendant has not paid said coupon, nor any part thereof, but is indebted to plaintiff therefor in the sum of seventy dollars, with interest from the 1st day of January, 1881.

And for a second and further cause of action said plaintiff alleges that on the first day of January, 1870, at Garnett, in said county and State, said county of Anderson made and issued its certain bond, dated on the day aforesaid, whereby it acknowledged itself to owe, and promised to pay to the bearer thereof one thousand dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, with interest at the rate of seven per cent. per annum, payable annually on the first day of January of each year, on the surrender of the coupons thereto attached, which said bond erroneously recited that it was executed and issued under the provisions of, and in conformity to, an act of the Legislature of the State of Kansas, approved February 26, 1866, entitled "An act to amend an act entitled An act to authorize counties and cities to issue bonds to railroad companies," approved February 10, 1865; whereas, said bond was executed and issued under the provisions of, and in conformity to, the laws of the State of Kansas, then in force, and in pursuance to the vote of the electors of Anderson county, of September 13, 1869, at an election regularly and duly ordered and held for that purpose.

That said bond was made and issued in payment of a subscription theretofore made by said county to the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company, a railroad corporation duly created and existing under the laws of the Territory and State of Kansas, and in order to distinguish it from others of like character was marked No. 22.

That afterwards, and on or about the 27th day of March, 1872, said bond was duly registered in the office of the auditor of the State of Kansas; that as each coupon for such annual interest fall-

ing due prior to January 1, 1881, matured, the same was paid by the officers of the county with the proceeds of a tax levied and collected each year by said county from its tax-payers for that purpose.

That among the coupons so attached to said bond was one made by said county, whereby it promised to pay to the Leavenworth, Lawrence and Galveston Railroad Company, or bearer, at the Farmers' Loan and Trust Co.'s Bank, in the city of New York, on the 1st of January, 1881, seventy dollars, being the annual interest due on said bond No. 22, so issued as aforesaid, a copy of which said bond, coupon, and certificate of its registry endorsed thereon by the auditor of State, except as to numbers and amounts, is hereunto annexed, marked Exhibit "A," and made a part of this petition.

That after said registration, and before said coupon by its terms became due and payable, it came to and for value became the property of this plaintiff, who ever since has been, and still is, the lawful owner and holder thereof.

That when said coupon by its terms became due and payable, the same was duly presented at the place of payment therein and in said bond mentioned, and payment demanded, which was refused.

That the defendant has not paid said coupon nor any part thereof, but is indebted to plaintiff therefor in the sum of seventy dollars, with interest from the 1st day of January, 1881.

[Here follow 178 other like counts, each upon a separate and like coupon, except number and time of maturity, amounting in all to $12,600.00, besides interest from Jan. 1, 1881, on $6,300.00, and from Jan. 1, 1882, on $6,300.00. Omitted in printing. See stipulation of counsel, p. 221.]

188 Wherefore plaintiff prays judgment against said defendant for twelve thousand six hundred dollars, with interest on sixty-three hundred dollars from the 1st day of January, 1881, and on sixty-three hundred dollars from January 1st, 1882, at the rate of seven per cent. per annum, together with the costs of this action.

PRATT, BRUMBACK & FERREY,
Att'ys for Pl'ff.

EXHIBIT "A."

No. 151. County of Anderson. $1,000.
United States. State of Kansas.

Bond.

Know all men by these presents, that the county of Anderson acknowledges to owe and promises to pay to Leavenworth, Lawrence & Galveston Railroad Co., or bearer, one thousand dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan and Trust Co. Bank, in the city of New York, with interest at the rate of seven per centum per annum, payable annually on the first day of January in each year on the surrender of the annexed coupons as they severally become due.

This bond is executed and issued under the provisions of, and in conformity to, an act of the Legislature of the State of Kansas, approved February 26th, 1866, entitled An act to amend an act entitled An act to authorize counties and cities to issue bonds to railroad companies, approved February 10th, 1865, and in pursuance to the vote of the electors of Anderson county of Sept. 13th, 1869.

In testimony whereof, The Board of County Commissioners of the said county of Anderson caused these presents to be signed by the chairman of said board and by the clerk of the county, and to be sealed with the seal of said county, and to be registered by the treasurer of said county.

Dated January 1st, 1870.

[SEAL.] (Signed) H. CAVENDER, *Chairman.*
" J. H. WILLIAMS, *Clerk.*

(Signed) A. SIMONS, *Treasurer.*

[50 cents internal revenue stamp.]

Coupon No. 151. $70.

The county of Anderson will pay the Leavenworth, Lawrence & Galveston Railroad Company, or bearer, at the Farmers' Loan & Trust Co.'s Bank, in the city of New York, on the first day of January, A. D. 188—, seventy dollars, interest due on their bond.

J. H. WILLIAMS,
County Clerk.

I, A. Thoman, auditor of the State of Kansas, do hereby certify that this bond has been regularly issued; that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the Legislature, entitled "An act to authorize counties, incorporated cities, and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads, or other works of internal improvement, and providing for the registration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2nd, 1872.

Witness my hand and official seal, this 27th day of March, 1872.

[SEAL.] A. THOMAN,
Auditor of State.

Endorsed: No. 3785. U. S. circuit court, district of Kansas. Thomas P. Beal, pl'ff, *vs.* Board of County Commissioners of the County of Anderson. Amended petition. Filed June 29, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy.

189 *Answer.*

In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant.

The said defendant, for answer to the petition of the said Thomas P. Beal, plaintiff, says:

First. That it denies each and every allegation averred by the said plaintiff in his said petition, except what is hereinafter expressly admitted or averred.

Second. That it admits and avers that it is a municipal corporation created and existing under and by virtue of the laws of the State of Kansas, and as such is subject to be sued under and by the name of The Board of County Commissioners of the County of Anderson.

Third. That pursuant to an order passed by The Board of County Commissioners of the County of Anderson on the 11th day of August, A. D. 1869, ordering a special election therefor, the said Board of County Commissioners submitted to the qualified voters of said Anderson county the question of issuing bonds to the Leavenworth, Lawrence and Galveston Railroad Company, of which order a certified copy is hereto attached, marked "Exhibit A," and made a part of this answer. And said defendant avers that said bonds were issued without any consideration therefor, and without authority of law, and that, to wit, on the 13th day of September, A. D. 1869, a vote was taken in said county pursuant to said submission, without the legal notice of thirty days having been given, at which election a majority of the persons voting voted in the affirmative; but that up to the first of January, 1870, and for some time thereafter, said railroad company's track was not completed, equipped, or in full operation to the town of Garnett.

That afterwards, to wit, on the 5th day of November, 1869, said railroad company by and through its president, James F. Joy, fraudulently and corruptly induced H. Cavender and Rueben Lowry, who then and there constituted a majority of The Board of County Commissioners of Anderson County, and conspired with them; and said county commissioners corruptly conspired with said railroad company by and through its president, James F. Joy, in fraud of the rights of said Anderson county, under color and pretended authority of said submission and vote, to agree to subscribe for 2,000 shares of the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company of $100 each, making in the aggregate $200,000; that as a part of said agreement said commissioners then and there fraudulently and corruptly, and without any authority, agreed to and with the said railroad company to sell and transfer the right of Anderson county to the said stock, to be subscribed as aforesaid, for and in consideration of the sum of one dollar, to James F. Joy, president of said railroad company, to authorize the chairman of The Board of County Commissioners to sign a transfer of said stock to said James F. Joy, president of said railroad company, and to assign the certificate for said stock which should be issued to said Anderson county by said railroad company, and to authorize in such assignment the necessary transfer of said stock upon the books of said railroad company, and to issue and deliver to the said James F. Joy, president of said railroad company, (in trust for said railroad company, to be delivered by him, the said James F. Joy, to said railroad company, when said railroad company's road was completed to the town of Garnett,) bonds of said An-

derson county, to the amount of $200,000, without the issuing to or the acquisition by the said county of Anderson on any stock of said railroad company, and without any consideration other than the nominal consideration of one dollar, and for said purpose and in pursuance of said fraudulent and corrupt
190 agreement by and between said commissioners and said railroad company, said commissioners then and there made an order, of which a certified copy is hereto attached, marked "Exhibit B," and made part of this answer; that said commissioners, in pursuance of said fraudulent and corrupt agreement, did fraudulently and corruptly subscribe for 2,000 shares of the capital stock of the L. L. & G. R. R. Co. of $100.00 each, making in the aggregate $200,000.00, and did, at the same time, and as a part of the same transaction, fraudulently and corruptly sell and transfer, without any authority so to do, the right of Anderson county to the said stock, subscribed as aforesaid, for and in consideration of one dollar, to James F. Joy, president of said railroad company, and did fraudulently and corruptly authorize the chairman of The Board of County Commissioners to sign a transfer of said stock to said James F. Joy, and to assign the certificate for said stock to be issued to Anderson county by said railroad company, and to authorize in such assignment the necessary transfer of said stock upon the books of said railroad company, and did fraudulently and corruptly issue and deliver to said James F. Joy, president of said railroad company, in trust for said railroad company, to be delivered by him, the said James F. Joy, to said railroad company when its road was completed to the town of Garnett, bonds of said Anderson county to the amount of $200,000.00 without the issuing to or the acquisition by the said county of Anderson of any stock of said railroad company, and without any consideration other than the nominal consideration of one dollar; said defendant avers that at the same time and for the same purpose, and in pursuance of said fraudulent and corrupt agreement and a part of the same transaction, the said L. L. & G. R. R. Co. made and delivered to the said commissioners a blank and pretended certificate of stock in said company to the amount of $200,000.00, which pretended certificate of stock was not signed by said company or by any agent or officer thereof or by any other person in its behalf; and the said commissioners, for the purpose and in pursuance of the agreement aforesaid, thereupon sold, assigned, released, and redelivered said blank certificate of stock to the said James F. Joy for said railroad company, and the said railroad company then and there, for the same purpose and as a part of the same transaction, received such release and transfer by and through the said James F. Joy, its president, well knowing that the same was unlawful and was a fraud upon the rights of said Anderson county. Said defendant avers that no subscription for stock of the said railroad company was ever made by The Board of County Commissioners of said Anderson county other than that made pursuant to said fraudulent and corrupt conspiracy, which the defendant alleges is void.

Said defendant further alleges that said railroad company fraudu-

lently and corruptly refused to issue $200,000.00 of its capital stock to said Anderson county, and fraudulently and corruptly refused to accept the bonds of said Anderson county on or under any conditions other than that said commissioners would issue its bonds to the amount of $200,000.00 to said railroad company, and at the same time would fraudulently and corruptly sell and transfer its certificate of stock subscribed as aforesaid for and in consideration of the sum of one dollar to the said James F. Joy, its president, for said railroad company, the said railroad company then and there well knowing that said stock was worth the sum of $200,000.00 and amounted in value to the sum of $200,000.00.

That afterwards, in furtherance of the aforesaid fraudulent and corrupt purpose and agreement, the said commissioners, H. Cavender and Reuben Lowry, executed and delivered to James F. Joy, president of said L. L. & G. R. R. Co., in trust for said railroad company, two hundred bonds of the county of Anderson, of the amount of $1,000 each, dated January 1st, 1870, and payable thirty years after date with interest at seven per cent. per annum, payable an-
191 nually, and with coupons thereto attached for said interest; that said bonds were executed and delivered by the said commissioners and received by the said James F. Joy, president of said railroad company in trust for said railroad company without a valid or adequate consideration, or any consideration other than the nominal consideration of one dollar as aforesaid; that said bonds were fraudulently and corruptly executed and delivered by said commissioners as aforesaid, and fraudulently and corruptly received by the said James F. Joy as aforesaid for the aforesaid consideration, the said commissioners and the said L. L. & G. R. R. Co. well knowing at the time that said bonds were fraudulently and corruptly executed and delivered by said commissioners and fraudulently and corruptly received by the said James F. Joy as aforesaid stated long before the said L. L. & G. R. R. was built, completed, and in full operation to the town of Garnett, in said Anderson county.

That the plaintiff herein, Thomas P. Beal, had full knowledge and notice of the aforesaid fraudulent and corrupt agreement by and between the said commissioners and the said L. L. & G. R. R. Co., and of all the foregoing facts in this answer stated before any of the said bonds or coupons thereunto annexed came to him and became his property, and that any and all of the said bonds or the coupons thereunto annexed, and the coupons upon which said plaintiff herein sues, were received and taken by the said plaintiff with a full and complete understanding, knowledge, and notice of the fraudulent and corrupt transactions by which said bonds and coupons thereunto annexed were obtained from the said Anderson county by the said L. L. & G. R. R. Co.

Wherefore said defendant prays judgment against said plaintiff for the costs of suit herein.

A. BERGEN AND J. S. WHITFORD,
Attorneys for Defendant.

"EXHIBIT A."

Ordered by the board that a special election be held in the several voting precincts in the county of Anderson, on Monday, September 13, 1869, whereat shall be submitted to the qualified voters, electors of said county for adoption or rejection, the following proposition, to wit:

Shall the county of Anderson subscribe $200,000.00 to the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company and issue the bonds of the county in payment thereof. Said bonds payable thirty years after their date, bearing interest at the rate of 7 per cent. per annum, payable annually.

Said bonds to bear date of January the 1st, 1870, and to be issued and delivered to said railroad company on the 1st day of January, A. D. 1870, and before that time if said railroad shall on or before that time complete its line of railway to the town of Garnett, in said county, and if said line of railway shall not be completed thus far by that time, then said bonds to be issued and delivered when said line of railway is completed to the town of Garnett, in said county. Provided the county of Anderson be released from all propositions or votes taken to subscribe stock and issue bonds to said railroad company. Electors desiring to vote on the above proposition shall have their tickets written or printed as above, and shall add thereto for or against the subscription of stock to the Leavenworth, Lawrence and Galveston R. R. Co. as the electors may desire to vote.

H. CAVENDER, *Chairman.*
REUBEN LOWRY, *Member.*

Attest: J. H. WILLIAMS, *Clerk.*

192 STATE OF KANSAS, }
Anderson County, } *ss:*

I, T. W. Foster, county clerk in and for said county, do hereby certify that the above and foregoing "Exhibit A" is a true and correct copy of the order therein stated as made by The Board of County Commissioners of said county on the 11th day of August, A. D. 1869, as the same appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of Anderson county, this 5th day of June, A. D. 1882.

[SEAL.] T. W. FOSTER,
County Clerk.

"EXHIBIT B."

ANDERSON COUNTY, KANSAS, *Nov. 5th,* 1869.

A special meeting of the board of county commissioners of Anderson county, Kansas, is hereby called to convene at the county building, in Garnett, on Friday, Nov. 5th, 1869, at 11 o'clock a. m., for the transaction of such business as may come before it.

H. CAVENDER.
REUBEN LOWRY.
J. B. LOWRY.

Attest: J. H. WILLIAMS, *Clerk.*

Resolved, That The Board of County Commissioners of Anderson County, Kansas, for and in (consideration) behalf of Anderson county, in accordance with the vote heretofore had and taken of the electors of said county to that effect, hereby subscribe for two thousand shares of the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company of one hundred dollars each, making in amount two hundred thousand dollars.

Resolved, That the stock above subscribed for by this board in behalf of Anderson county is hereby sold and transferred for and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, to James F. Joy, president of said railroad company, and the chairman of this board is hereby authorized to sign a transfer of said stock to said James F. Joy, and to assign the certificate for said stock issued to Anderson county by said railroad company, and to authorize in such assignment the necessary transfer of said stock and the books of said company.

Resolved, That the clerk of this board be directed to procure two hundred lithographed bonds of the date of January 1st, 1870, of the denomination of one thousand dollars each, payable to said Leavenworth, Lawrence and Galveston Railroad Company or bearer, with interest coupons attached, the principal payable on the first day of January, A. D. 1900, at the Farmers' Loan and Trust Company Bank, in the city of New York, together with annual interest thereon, at the rate of seven per cent. per annum, payable annually at the same place, and that the clerk of this board cause his name to be lithographed on each of said coupons on said bonds, and that the chairman and clerk of this board sign said bonds in behalf of the county of Anderson, and that the treasurer of this county duly register said bonds, and that said bonds be duly stamped, and when so signed, registered, and stamped they be delivered to James F. Joy in trust for said railroad company, to be delivered by him to said company when said company's road is completed to the town of Garnett, such certificate to be certified by a resolution of this board.

Resolved further, That the deposit of the bonds with the president of this company be, and is, made on this consideration only: That in case said company shall not complete their line of railway to the town of Garnett by the 1st day of January, A. D. 1870, then and [in] that event all interest that may accrue on said bonds from the first day of January, A. D. 1870, until the date of the actual completion of the road be cancelled at the time of the actual delivery of
193 the bonds to the company, so that the county shall only be liable for interest on said bonds from and after the date of the actual completion of the road to the town of Garnett, in said county.

(Signed) H. CAVENDER,
Chairman of Board.
REUBEN LOWRY, *Member.*

Attest: J. H. WILLIAMS, *Clerk.*

I, J. H. Williams, county clerk of said county, do hereby certify

that the foregoing is a true and correct copy of the resolution of the Board of County Commissioners on the 5th day of November, 1869.

[SEAL.] J. H. WILLIAMS,
County Clerk.

STATE OF KANSAS, }
Anderson County, } *ss:*

I, T. W. Foster, county clerk in and for said county, do hereby certify that the above and foregoing Exhibit B is a true and correct copy of the order and resolutions therein stated as made by The Board of County Commissioners on the 5th day of November, A. D. 1869, as the same appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of Anderson county, this 5th day of June, A. D. 1882.

[SEAL.] T. W. FOSTER,
County Clerk.

Endorsed: No. 3785. Thomas P. Beal *vs.* The Board of County Commissioners of the County of Anderson. Answer to amended petition. Filed July 26th, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy. A. Bergen and J. S. Whitford, atty's for def'ts.

194 *Reply.*

In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant.

The plaintiff above named, for reply to the answer of the above-named defendant, filed herein, denies the same, and each and every allegation and averment therein contained.

Wherefore plaintiff demands judgment as in his petition prayed.

PRATT, BRUMBACK & FERREY,
Atty's for Pl'ff.

Endorsed: No. 3785. United States circuit court, district of Kansas. Thomas P. Beal, pl'ff, *vs.* the Board of County Commissioners of the County of Anderson, def't. Reply. Filed Aug. 4, 1882. A. S. Thomas, clerk. By Geo. N. Holmes, deputy. Pratt, Brumback & Ferrey, att'ys for pl'ff.

In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant.

Now comes the said defendant and moves to suppress the deposition of Wyllis C. Ransom, heretofore filed in this action—

1. Because the same is not taken and certified according to law;
2. Because it does not appear and is not certified that said witness was sworn to testify the whole truth; and

3. Because it does not appear and is not certified by whom said deposition was reduced to writing, nor that it was written in the presence of the officer certifying and taking said deposition, nor that the officer or witness wrote the same.

J. S. WHITFORD & A. BERGEN,
Att'y for Def't.

Endorsed: No. 3785. Thomas P. Beal *vs.* B'd Co. Commissioners of Anderson Co. Motion to suppress deposition. Filed Dec. 2, 1882. A. S. Thomas, clerk. By Frank J. Thomas, deputy. A. Bergen & J. S. Whitford, att'ys for def'ts.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 27th day of November, 1882, proceedings were had, and appear of record, in words and figures following, to wit:

MONDAY, *December* 4, 1882.

THOS. P. BEAL
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON. } 3785.

Continued.

195 In the Circuit Court of U. S. for District of Kansas.

WM. N. COLER, JR.,
vs.
B'D CO. COM'RS OF ANDERSON CO. } No. 3785.

THOS. P. BEAL
vs.
B'D CO. COMM'ERS OF ANDERSON CO. } No. 3678.

It is consented that def't may amend answers in above-entitled actions by inserting, by interlineation, on the trial, as follows: At the end of line 27, page 1, but notice of such election was not given thirty days before the holding of the same; and after submission in line 29, page 1, without the legal notice of 30 days having been given.

PRATT, BRUMBACK & FERREY,
Att'ys for Pl'ff.

[Endorsed:] Beal *v.* Anderson Co. No. 3785. Coler *v.* Anderson Co. No. 3678. Stipulation. Filed Feb. 12, 1883. A. S. Thomas, clerk. By Frank J. Thomas, deputy.

UNITED STATES OF AMERICA, *District of Kansas.* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Leavenworth,

in said district, on Monday the 4th day of June, 1883, proceedings were had and appear of record, in words and figures following to wit:

WEDNESDAY, *June* 13, 1883.

THOMAS P. BEAL
vs.
THE BOARD OF COUNTY COMMISSIONERS OF ANDERSON COUNTY. } No. 3785.

Now come the parties hereto by their attorneys; also come the following jurors, to wit: J. Q. A. Peyton, Lew. Green, Andrew Stone, T. C. English, R. B. Morris, J. B. Cunningham, Samuel Dolmon, W. L. McKinzey, Wm. Evatt, Joseph Savage, Ben. Wallack, who were duly sworn, and Frank Holsinger, who duly affirmed, twelve good and lawful men of the body of the district of Kansas, who, being duly empannelled and sworn and affirmed as aforesaid to well and truly try the matters submitted to them in this action, and a true verdict give according to the law and evidence; and thereupon the trial of this case is proceeded with; and the jury having heard the evidence, arguments of counsel, and instructions of the court, retire under the charge of a sworn bailiff for deliberation.

And afterwards come the jury into open court and render their verdict, in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON. } 3785.

We, the jury in said entitled action, find for the plaintiff, and assess his damages against the defendant at the sum of fourteen thousand three hundred & twenty-one $\frac{34}{100}$ dollars.

R. B. MORRIS, *Foreman.*

It is therefore by the court here considered, ordered, and adjudged that said plaintiff, Thomas P. Beal, have and recover of and from said defendant, The Board of County Commissioners of Anderson County, the sum of fourteen thousand three hundred & twenty-one $\frac{34}{100}$ (14,321$\frac{34}{100}$) dollars, and also his costs in this action expended.

196 In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant. } No. 3785.

Now comes said defendant, by its attorneys, A. Bergen, L. K. Kirk,

and Manford Schoonover, and demurs to the plaintiff's evidence upon the ground that no cause of action is proved.

A. BERGEN,
Attorney for Defendant.

Endorsed: No. 3785. Thos. P. Beal *vs.* Board of County Commis. of Anderson Co. Demurrer to evidence. Filed June 13, 1883. A. S. Thomas, clerk. By Frank J. Thomas, deputy.

Motion for New Trial.

In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant. } No. 3785.

Now comes the said defendant, by its attorneys, A. Bergen, L. K. Kirk, and Manford Schoonover, and moves the court to vacate the verdict and decision made and rendered in this action, and grant said defendant a new trial therein for the following causes, affecting materially the substantial rights of said defendant, to wit:

1st. Error of law occurring at the trial and excepted to by said defendant.

2nd. Because the court overruled said defendant's demurrer to the plaintiff's evidence; to which order the defendant, at the time, excepted.

3rd. Because the court ordered and directed the jury to render a verdict for said plaintiff; to which order said defendant, at the time, excepted.

4th. Because said decision of said court in ordering the jury to find a verdict for the plaintiff is not sustained by sufficient evidence and is contrary to law, and was excepted to by said defendant.

5th. Because that the said verdict is not sustained by sufficient evidence.

A. BERGEN,
Attorney for Defendant.

[Endorsed:] No. 3785. Thos. P. Beal *v.* Board of Co. Commis. of Anderson Co. Motion for new trial. Filed June 13, 1883. A. S. Thomas, clerk. By Frank J. Thomas, deputy. A. Bergen, def't's att'y.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America, for the district of Kansas, begun and held at the city of Leavenworth, in said district, on Monday, the 4th day of June, 1883, proceedings were had, and appear of record, in words and figures following, to wit:

THURSDAY, *June* 14, 1883.

THOMAS P. BEAL
vs.
THE B'D OF CO. COM'RS OF ANDERSON COUNTY. } 3785.

Hearing of motion for new trial continued.

197 In the Circuit Court of the United States, District of Kansas.

Before Hon. C. G. Foster, J., and a jury.

THOMAS P. BEAL, Plaintiff,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, STATE OF KANSAS, Defendant.

LEAVENWORTH, KAS., *June* 13*th*, 1883.

Appearances: Pratt, Brumback & Ferry, counsel for plaintiff; A. Bergen, Esq.; John S. Whitford, Esq., counsel for defendant.

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Bond, coupon, certificate of registration, 1, 2.
Order of election, 3.
Canvass of vote; order for del. of bonds, 4.
Order levying tax to pay int. on bonds, 5.
Order in re-transfer of stock to Joy, 6.

Witnesses:

J. G. Lindsey—Direct examination, 7; cross-examination, 9; re-examination, 15; re-cross-examination, 16; recalled, 21.
Geo. M. Everline—Direct examination, 16; cross-examination, 18.
J. T. Lavter—Direct examination, 19; cross-examination, 21.
J. S. Ford, dep.—Direct examination, 22; cross-examination, 22; re-examination, 23; re-cross-examination, 23.
Wyllys C. Ransom, dep.—Direct examination, 24; cross-examination, 25.

JONES & TILLEY,
Law Stenographers, N. W. corner Sixth and Broadway, Kansas City, Missouri.

198 In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Plaintiff,
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant.

Be remembered that on the 13th day of June, 1883, and at the regular June term of said court, the above-entitled cause coming on to be heard before the court and a jury, the following proceedings were had:

The plaintiff to sustain the issue on his part offered evidence as follows:

One of the bonds, and the coupons sued upon, a true copy of which is as follows:

No. ——. County of Anderson. 1,000.

United States of America, State of Kansas.

Bond.

Know all men by these presents, that the county of Anderson acknowledge to owe and promises to pay to Leavenworth, Lawrence & Galveston Railroad Co., or bearer, one thousand dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan and Trust Co. Bank, in the city of New York, with interest at the rate of seven per centum per annum, payable annually on the first day of January in each year, on the surrender of the annexed coupons as they severally become due.

This bond is executed and issued under the provisions of and in conformity to An act of the Legislature of the State of Kansas, approved February 26th, 1866, entitled An act to amend an act entitled An act to authorize counties and cities to issue bonds to railroad companies, approved February 10th, 1865, and in pursuance to the vote of the electors of Anderson county of Sept. 16th, 1869.

In testimony whereof, The Board of County Commissioners of the said County of Anderson have caused these presents to be signed by the chairman of said board and by the clerk of the county, and to be sealed with the seal of said county, and to be registered by the treasurer of said county.

Dated January 1st, 1870.

[SEAL.] H. CAVENDER, *Chairman.*
J. H. WILLIAMS, *Clerk.*

A. SIMONS, *Treasurer.*

[50 cent internal revenue stamp.]

No. —— *Coupon.* $70.

The county of Anderson, State of Kansas, will pay to the Leavenworth, Lawrence & Galveston Railroad Company, or bearer, at the Farmers' Loan & Trust Co.'s Bank, in the city of New York, on the first day of January, A. D. 188–, seventy dollars, interest due on their bond.

J. H. WILLIAMS,
County Clerk.

[Endorsed:] I, A. Thomas, auditor of the State of Kansas, do hereby certify that this bond has been regularly issued; that the signatures thereto are genuine, and that such bond has been duly registered in my office in accordance with an act of the Legislature entitled "An act to authorize counties, incorporated cities,
199 and municipal townships to issue bonds for the purpose of building bridges, aiding in the construction of railroads or other works of internal improvements, and providing for the regis-

tration of such bonds, the registration of other bonds, and the repealing of all laws in conflict therewith," approved March 2, 1872.

Witness my hand and official seal, this 27th day of March, 1872.

[SEAL.] A. THOMAN,
Auditor of State.

On which bond was the following endorsement:

For value received the Leavenworth, Lawrence and Galveston Railroad Company guarantees the payment of this bond, and all interest coupons thereto attached.

R. S. WATSON, *Treasurer.*

Plaintiff next offered and read in evidence a transcript from the record of proceedings of defendant, Board of County Commissioners, under date of August 11th, 1869, as follows:

"Ordered by the board, that a special election be held in the several voting precincts in the county of Anderson, on Monday, September 13th, 1869, whereat shall be submitted to the qualified voters, electors of said county, for adoption or rejection, the following proposition, to wit: Shall the county of Anderson subscribe $200,000 to the capital stock of the Leavenworth, Lawrence & Galveston Railroad Company, and issue the bonds of the county in payment thereof, said bonds payable thirty years after their date, bearing interest at the rate of 7 per cent. per annum, payable annually. And bonds to bear date of January 1st, 1870, and to be issued and delivered to said railroad company on the 1st day of January, A. D. 1870, and before that time, if said railroad shall on or before that time complete its line of railway to the town of Garnett, in said county; and if said line of railway shall not be completed thus far by that time, then said bonds to be issued and delivered when said line of railway is completed to the town of Garnett, in said county, provided the county of Anderson be released from all propositions or votes taken to subscribe stock and issue bonds to said railroad company. Electors desiring to vote on the above proposition shall have their tickets written or printed as above, and shall add thereto for or against the subscription of stock to the Leavenworth, Lawrence and Galveston R. R. Co., as the electors may desire to vote.

H. CAVENDER, *Chairman.*
RUBEN LOWRY, *Member.*

Attest: J. H. WILLIAMS, *Clerk.*

The plaintiff also offered and read in evidence the following transcript of the proceedings of said county board:

"COUNTY CLERK'S OFFICE, GARNETT,
"ANDERSON CO., KA'S., *September* 17, 1869.

"Board of County Commissioners met pursuant to law for the purpose of canvassing returns of the election, held in said county on the 13th day of September, 1869, for the purpose of voting upon a proposition to vote stock to certain railroad companies.

Present: H. Cavender, chairman; J. B. Lowry, members present; and we find the vote as follows:

Proposition to Vote Bonds to Leavenworth, Lawrence and Galveston Railroad Company.

		For the Bonds.	*Against the Bonds.*
200	Jackson township there were—		
	In favor of bonds	23	
	Against bonds		40
	In Ozark township—		
	For bonds	7	
	Against bonds		32
	In Walker township—		
	For bonds	104	
	Against bonds		32
	In Washington township—		
	For bonds	28	
	Against bonds		6
	In Monroe township—		
	For bonds	389	
	Against		16
	In Reeder township—		
	For bonds	0	
	Against		246
		551	372

We hereby certify that the proposition to subscribe stock to the Leavenworth, Lawrence & Galveston Railroad Company received five hundred and fifty-one votes, and that there were three hundred and seventy-two votes against said proposition.

H. CAVENDER, *Chairman.*
J. B. LOWRY, *Member.*

Attest:
J. H. WILLIAM, *Clerk.*

The plaintiff also offered and read in evidence the following transcript of the proceedings of said county board:

"COUNTY CLERK'S OFFICE, GARNETT,
"*July 8th*, 1870.

"Board of County Commissioners met pursuant to adjournment; full quorum present; minutes of preceding meeting read and approved.

"Whereas on the 5th day of November, A. D. 1869, the Board of County Commissioners of Anderson County, State of Kansas, did formally issue to the Leavenworth, Lawrence & Galveston Railroad Company the bonds of Anderson county to the sum of $200,000, according to provisions of the vote of the electors of said county, and did place the said bonds in the hands of James F. Joy, to be delivered to said railroad company when the said railroad should be completed to the town of Garnett; said bonds to bear interest at the rate of 7 per cent. per annum from the 1st day of January, 1870; but in case said railroad should not be completed to Garnett by the

1st day of January aforesaid, the interest accruing upon said bonds from said first day of January, 1870, to the time said road should be completed to said town of Garnett should be cancelled;

"And whereas on the 8th day of July, 1870, M. R. Baldwin, sup't of said L., L. & G. R. R. Co., did certify to this board that said railroad was completed, equipped, and operated to the town of Garnett on the 1st day of March, 1870:

"Therefore, this board do authorize the same James F. Joy to deliver said bond to said railroad company upon returning the coupons of said bonds and the amount of interest accrued upon said bonds between the first day of January and March, 1870, to the treasurer of Anderson county.

"Minutes read and approved. On motion board adjourned to meet on Tuesday, July 19, 1870, at 9 a. m.

"GEO. W. ILER,
"*Chairman of the Board of County Commissioners, Anderson County, Kansas.*"

Attest:
[SEAL.] J. H. WILLIAMS, *Clerk.*

"COUNTY CLERK'S OFFICE,
"ANDERSON COUNTY, KANSAS, *Sept.* 5, 1870.

"Being the first Monday of September, 1870, Board of County Commissioners met pursuant to law—Present, Geo. W. Iler, chairman, J. B. Lowry, and J. W. Vaughn—met for the *pursuant* of levying taxes for the year 1870, at which time the following taxes were levied to be collected for the year 1870, to wit: That there be levied on all the taxable property of said county the sum of four mills per dollar on all taxable property of said
201 county for road purposes. It is hereby ordered that there be levied on the taxable property of Anderson county the sum of 7½ mills per each dollar to pay ten months' interest on the bonds of said county issued to the Leavenworth, Lawrence & Galveston Railroad Company for the year 1870, the two months' interest from January 1, 1870, to March 1, 1870, having been agreed upon between said railroad company and The Board of County Commissioners to be cancelled.

ILER & VAUGHN,
For the Levy.

J. B. Lowry enters his protest as follows:

The undersigned, commissioner of Anderson county, protests against the action of the majority of said board in the matter of the levying of taxes for the payment of the interest on the L., L. & G. R. R. bonds, for the following reasons, to wit:

Said bonds are not legally in the hands of said railroad company, if in the hands of said railroad company at all.

J. B. LOWRY,
Member of the Board of County Commissioners of Anderson County.

Attest:
[SEAL.] J. H. WILLIAMS, *Clerk.*

The plaintiff also offered in evidence a duly certified copy of the registration of the bonds in question in the office of the auditor of State and then rested his case.

And thereupon the defendant demurred to the evidence and asked the court to declare the law to be that upon the pleadings and proofs the plaintiff was not entitled to recover, which instruction the court refused to give, and to which refusal to so instruct the defendant at the time duly excepted.

And thereupon, to sustain the issue upon its part, the defendant introduced evidence as follows:

A transcript of a resolution from its record of proceedings under date of November 5th, 1869, as follows:

"Resolved, That The Board of County Commissioners of Anderson County, Kansas, for and in consideration — behalf of Anderson county, in accordance with the vote heretofore had and taken of the electors of said county to that effect, hereby subscribe for two thousand shares of the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company of one hundred dollars each, making in amount two hundred thousand dollars.

"Resolved, That the stock above subscribed for by this board in behalf of Anderson county is hereby sold and transferred for and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, to James F. Joy, president of said railroad company, and the chairman of this board is authorized to sign a transfer of said stock to said James F. Joy, and to assign the certificate for said stock issued to Anderson county by said railroad company, and to authorize in such assignment the necessary transfer of said stock and the books of said company."

J. G. LINDSEY, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct examination by Mr. BERGEN:

Q. Captain, what, if any, official position did you occupy in Anderson county in 1869 and 1870?

A. I was county attorney of Anderson county.

Q. State whether you recognize this bond, the signature to it, &c.

A. Yes, sir.

Q. Have you any knowledge of the circumstances attending the issue of that bond?

A. I have.

Q. Will you state, captain, what you know as to the matter of the issue or non-issue of stock to Anderson county for this
202 bond, and others of the same kind, by the Leavenworth, Lawrence & Galveston Railroad Company?

A. There was no stock ever issued to the county at all.

Q. You say there was never any stock issued to the county at all?

A. No, sir; there was not.

Q. State whether in pursuance of the resolutions which I have read—I suppose you heard me read the resolution.

A. Yes, sir; I have a copy of it myself.

Q. Were you present when the resolution was adopted by the board?

A. I was.

Q. What was subsequently done towards the assignment of that stock; what are the facts within your knowledge as to any assignment of stock which was or was not issued before any assignment of right to the stock?

A. Well, this action of the board in passing that resolution was taken in the evening of the 5th of November, 1869. In the night, on the night of the 6th and 7th, or the 7th and 8th, I am not positive which, of that month, the bonds were signed up. They were not all signed in one day. The work was done in the night, and in the day time, and after the bonds had been signed and the seal placed to them by the clerk, a certificate, a blank certificate of stock, or what purported to be a certificate of stock, was laid down upon the desk in front of the chairman of the Board of County Commissioners. The board was not in session, only the clerk and the chairman there; and put under a blotter at the foot was an assignment, and the chairman was asked to sign that assignment in blank, and he signed it. The clerk was then asked to sign it, and I protested against its being signed. I told the clerk the condition it was in, being blank.

Objected to.

WITNESS: Well, he did not sign it for a considerable while, but after awhile he signed it and put the seal on. It was a blank piece of paper.

Q. Not signed as a certificate of stock to any person?

A. No, sir; not filled up at all.

Q. In any way?

A. No, sir.

Q. State, captain, your knowledge as to the time of the notice which was given before this election held on the 13th of September, 1869.

Objected to by plaintiff's counsel as incompetent.

The COURT: Have you not record evidence of that?

Mr. BERGEN: No, sir.

The COURT: You may ask the witness if he has any personal knowledge of the time and manner of the publication of the notice.

Mr. BRUMBACK: So far as we have been able to find, there is nothing in the records of the Board of County Commissioners to show the time or manner of the notice, or, indeed, that there was one. The only provision of the statute I find governing this is section 468 of the general statutes, which provides that the sheriff shall give notice of elections by his proclamation and by publication in some newspaper. This witness is, I understand, was neither the sheriff at that time nor the publisher of any newspaper. We do not think it competent.

Q. Do you know how long this notice of the election to be held on the 13th of September, relative to these bonds, was published?

A. Well, counting the day of publication——

Objected to.

Q. By the COURT: Do you know of your own knowledge?
A. Yes, sir; I do. I prepared the notice for the printer.
Q. How long was it published?
A. It was published 24 days, counting both dates.
Q. That is, the day of publication and the day of the election?
203 A. Yes, sir.
Q. It was not published thirty days?
A. No, sir.

Cross-examination by Mr. PRATT:

Q. How long were you county attorney of Anderson county?
A. I was serving my second term then; I think my first term had expired in January.
Q. During your term of office this proposition was submitted to the people, the vote had, the order to issue the bonds made, and the bonds issued and placed in the hands of the president of the railroad company?
A. Yes, sir.
Q. All of that was done during your term of office?
A. Yes, sir; I think all of it.
Q. I understood you to say in answer to a question of Judge Bergen that you had charge of this matter; or, I believe, that was a side remark of his.
A. No, sir; I didn't have any particular charge of it.
Q. What charge did you have of it?
A. I was watching out for the interests of the country, as far as I could.
Q. You prepared the notice?
A. I looked over the proof and made some corrections.
Q. Were you editing or publishing any paper at the time?
A. No, sir.
Q. What paper was the notice published in?
A. It was published in what was then called The Garnett Plain Dealer.
Q. Who was the editor of that paper?
A. At that time? I could not tell; they changed so often.
Q. Can you tell who was the publisher?
A. No, sir; they changed too frequently; I have, probably, a memorandum at the hotel from which I could tell.
Q. You were the legal adviser of the county, and were looking after the interests of the county?
A. I was, to some extent; yes, sir.
Q. Did you ever procure a copy of the publication, with the usual affidavit of proof by the publisher, and give it to the clerk of the county commissioners or to the board?
A. Sir?
Q. Did you procure a copy of the notice as published, and a proof

of publication, and give it to the county clerk or the board of county commissioners?

A. No, sir.

Q. Did you do anything with regard to such proof?

A. I don't think anybody did.

Q. You were the legal adviser of the county; it was your duty to do so.

A. No, sir; I don't think it was.

Q. It was your duty, as county attorney.

A. It might have been if I had been called upon by the board.

Q. At any rate you did not do it?

A. I do not remember doing it, sir.

Q. But you watched the publication every week?

A. O, I noticed it incidentally.

Q. And you saw that it was published through 24 issues of the paper?

A. Yes, sir; 24 days before the election; the paper was published weekly.

204 Q. You did not think it necessary to have any other evidence of that except what was in your mind?

A. I don't know that I gave the matter any thought at all.

Q. Still you were the legal adviser of the county?

A. Yes, sir.

Q. When was the road completed to Garnett?

A. Some time in March, 1870.

Q. What was the object of the county in subscribing stock to that railroad and issuing these bonds in payment thereof?

Objected to by defendant's counsel as incompetent and immaterial. Objection overruled, to which ruling of the court defendant, by its counsel, at the time, duly excepted.

A. Well, I could hardly say, Mr. Pratt, how that is.

Q. You know, do you not?

A. Well, of course; it was for the purpose of getting the road built.

Q. The county commissioners were not speculating in railroad stocks, were they, to any great extent?

A. No, sir.

Q. It was for the purpose of having the road built there?

A. Yes, sir.

Q. They got the road?

A. Yes, sir.

Q. It has been operated ever since that time?

A. Yes, sir.

Q. Has the interest been paid on the bonds ever since, up to 1881?

A. I have no personal knowledge; I can only testify from what I have heard.

Q. You understand that it has been paid?

A. My understanding is that there has been trouble, but when it commenced I don't know.

Q. Well, prior to 1881 it was paid?
A. Yes, sir.
Q. You are a tax-payer there?
A. Yes, sir.
Q. You have paid taxes there every year to pay interest on these bonds?
A. Yes, sir.
Q. Have you been county attorney since 1869?
A. Yes, sir.
Q. During what years?
A. I was elected in 1876 again, I think; I was county attorney from 1876 to 1878.
Q. Mr. Lindsay, you say that no stock was ever issued by the railroad company to the county?
A. I said so.
Q. You mean by that that no certificate was issued?
A. Well, I mean that, and I mean there was no stock issued either, as I understand it.
Q. How do you understand that stock is issued; in any other way than by certificate?
A. I don't know, sir.
Q. Did you ever hear of any other way?
A. I am not sufficiently familiar with the manner in which railroads do that to give an intelligent answer.
Q. Well, the county subscribe for stock; the records show that?
A. Yes, sir.
Q. They paid for it by issuing these bonds?
A. They issued the bonds; yes, sir.
205 Q. Didn't they issue them in payment of the subscription?
A. That is the question; I don't know whether it would be called a payment or not; it is probably a legal question; but these 200 bonds were issued on account of that subscription of stock.
Q. You were the county attorney; you would not have allowed them to issue the bonds for nothing?
A. No, sir.
Q. You would not have permitted them to swindle the county?
A. Well, no, sir; I objected and filed a protest against it.
Q. Did you take any steps then as the legal adviser of the county to stop the issue of the bonds?
A. No, sir; it was done in the night, and the bonds went out the next day; there was no time.
Q. You knew of it all the time; your knowledge of the issue of the bonds was not confined to the evening they were signed?
A. No, sir; I knew of it.
Q. You took no steps to stop it?
A. No, sir.
Q. You were county attorney in 1876?
A. Yes, sir.
Q. Did you take any steps in 1876 to force the railroad company to issue stock to the county?
A. No, sir; I investigated the matter and found that the road had

gone into bankruptcy; I think it was in the hands of a receiver at that time.

Q. It has since been sold out?

A. So I have heard.

Q. Well, you know it was in bankruptcy in 1876?

A. Yes, sir.

Q. And don't you know it has since been sold under foreclosure proceedings in this court?

A. I only know from hearsay.

Q. I thought you said a moment ago that you had investigated the matter?

A. I did, to find out whether the stock was of any value.

Q. You found it was of no value?

A. Yes, sir.

Q. The county went on and paid the interest on the bonds until they found that the stock was of no value, and then stopped?

A. Well, I did not think they had any stock to be of value.

Q. You mean they had no certificate of stock?

A. Yes, sir.

Q. They subscribed for the stock and issued the bonds?

A. Yes, sir.

Q. If they received no stock they were entitled to it?

A. Well, that is a legal question.

Q. Now, who was sheriff of Anderson county at that time; I mean at the time of the publication of the notice we have been speaking of here?

A. It was one of two men; I am not positive which.

Q. Who?

A. Either Elias Norris or Edward Rain.

Q. Where are they?

A. Norris is in California.

Q. Where is Rain?

A. He is at Garnett; I am almost confident it was Norris, however.

Q. You are confident this notice was published but 24 days?

A. That is my recollection.

Q. How do you figure that?

A. Well, this order of the board for the election was made
206 on the night of Wednesday, and the paper was published the next morning—Thursday.

Q. That was the first publication?

A. No; wait a moment; our paper was published the next morning, or, that was the publication day, but like all county papers it was run off the evening before, and there was so much to do that this notice was not ready in time for that issue, August 12th, and did not get in until the 19th, which was the first publication, and from that up to the date of election would make 24 days.

Q. You mean, then, the notice covered a period of 24 days?

A. Yes, sir.

Q. That notice was simply a publication of the order of the board, was it?

A. Well, to give you the formula of that notice would be impossible; I don't think it was as long as this order, but I don't know.

Re-examination by Mr. BERGEN:

Q. Captain Lindsey, you say the railroad was completed to Garnett in March, 1870?
A. Yes, sir.
Q. Was it completed from Leavenworth to Garnett?
A. No, sir; it never was completed from Leavenworth to Garnett.
Q. There was something said in your cross-examination as to the value of this stock in 1876?
A. Yes, sir.
Q. I believe you said it was of little or no value.
A. Yes, sir.
Q. Was it regarded as of value in 1869 and 1870?
A. Yes, sir; it was claimed by the officers of the railroad company, who canvassed the county, that it would be worth par when the road was completed and operated.
Q. Do you know as a matter of fact from the officers of the railroad company, whether they were willing to give the stock to the county for the bonds?
A. That was the agreement between them before the vote was submitted.
Q. Before the bonds were issued were they willing to do that?
A. I suppose so; I never heard any dispute about it, except the complaint that the company never issued any.

Re-cross examination by Mr. PRATT:

Q. Did you made any speeches in the county, advocating the subscribing of this stock and the issuing of these bonds?
A. No; I think Mr. Heining, the superintendent of the road, did the most of it.
Q. Well, didn't you assist him; didn't you make some.
A. I don't think I did.
Q. Now, are you sure? It seems to me that you did.
A. It seems to me that you were not there.
Q. No, but I was in a position to know something about it; have you any recollection whether you did or not?
A. I think I was in favor of it; if it was a square transaction.
Q. By Mr. BERGEN: Captain, do you know of the sheriff having given any notice of this election?
A. No, sir; I do not know of any proclamation being made.

GEO. M. EVERLINE, a witness called on the part of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. BERGEN:

207 Q. Of what county are you a resident?
A. Of Anderson county.
Q. How long have you resided there?

A. Since March, 1866.

Q. Were you a resident of that county in 1869?

A. Yes, sir.

Q. What official position did you occupy then?

A. None at that time.

Q. In the fall of 1869?

A. No, sir; I did up to January, 1869, and then again in 1871; I was out two years.

Q. State if you have any knowledge of the circumstances attending the issuing of that bond, and the series of bonds like it, to the L., L. & G. Railroad Company.

A. My knowledge of the issuing of the bonds is only general; I was around the county building while the commissioners were in session; there was a good deal of talk and a good deal of running in and out, and I do not remember that I was in the office when the bonds were issued or when the order was made; I remember being in when the stock was sold for one dollar.

Q. I will ask you whether you know what was done in the way of the county selling its right to the stock, or assigning its right to the certificate of stock?

A. That I don't know personally.

Q. Were you present when the certificate of stock, or pretended certificate of stock, was assigned?

A. I don't know whether I was or not; I did not see it done; I may have been present, but I am not positive.

Q. Did you know the length of time for which notice was given of the election held on the 13th of September?

A. I have a general recollection of it; an indistinct one in connection with it.

Q. State how long that notice was given?

Objected to by plaintiff's counsel, as incompetent.

By the COURT:

Q. What knowledge did you have?

A. There was considerable conversation about the matter; and I had a conversation with Mr. Cavender, who was chairman of the Board of County Commissioners, and I made a statement to him, like this——

Objected to.

The COURT: I am afraid that is not competent; it must be something within your own knowledge.

By Mr. BERGEN:

Q. If you have knowledge of it, state it.

A. I evidently had knowledge at the time, from what I said to him.

Mr. PRATT: We object. To witness—The question is whether you had no knowledge of the length of time for which the notice was published?

WITNESS: I don't know exactly how to answer that question; as a

matter of course I don't remember having looked over the files of the paper, or anything of that kind.

By Mr. BERGEN:

Q. Did you have any knowledge then of the length of time it was published?

A. Yes, sir.

Q. Then what is your recollection of the length of time notice was given?

A. Twenty days' notice; as a matter of course it ran over one or two days, making twenty-one or twenty-two days.

Q. No more?

A. No more.

Cross-examination by Mr. PRATT:

208 Q. You refer to the publication in the newspaper, do you?

A. Yes, sir.

Q. What newspaper was it published in?

A. The Garnett Plain Dealer.

Q. In any other paper?

A. No, sir.

Q. How many publications were there?

A. Three.

Q. But three?

A. But three.

Q. The first one on what day of the month?

A. That I can only answer from the date of the order; the first publication as I remember it was on the 18th day of August.

Q. And there was but three publications?

A. Yes, sir.

Q. Hence you say but twenty days?

A. Yes, sir; I may be mistaken about that.

By Mr. BERGEN:

Q. Was there any notice but that in the newspaper of this election?

A. I don't know of any other.

By Mr. PRATT:

Q. In other words, you don't know anything about that?

A. Yes, sir.

Q. You are not sure about that?

A. I am sure about the number, but I am not positive when the first one was.

J. T. LAWTER, called for defendant, being duly sworn, testified as follows:

Direct examination by Mr. BERGEN:

Q. Of what county are you a resident?

A. I have lived in Anderson county 26 years.

Q. Were you a resident of that county in 1869?

A. Yes, sir.

Q. State to the court and jury whether you have any knowledge of the circumstances attending the transfer of the right of Anderson county to certain stock of the L., L. & G. Railroad Company; if so, state what you know about it.

Objected to, as incompetent. Objection overruled.

Q. In the first place, how long is it since you have seen Elias Norris?

A. I have not seen him since he moved to California.

Q. How long ago is that?

A. It has been some time; I can't say exactly.

Q. How long since you have seen the then county clerk, J. H. Williams?

A. Six or eight years.

Q. Where is he said to have gone?

A. I heard a rumor that he had gone to Texas, and then that he was down in Missouri somewhere; I don't know where he is.

Q. What do you know of these commissioners—Mr. J. B. Lowry?

A. He is dead.

Q. Do you know anything concerning Henderson Cavender, whether he is a resident of the county?

A. He is not; I have been told he lives down on the Missouri line somewhere; I don't know his post office address.

Q. Do you know Ruben Lowry; if so, what is the state of his health and his general condition?

A. He is a resident of the county.

Q. How about his age?

A. He is very old and feeble and infirm, and I hardly consider him competent to know anything about what happened at the time.

209 Q. In the fall of 1869, did you have an office in the courthouse there?

A. Yes; I occupied a room there; not as a county officer, but as a Government officer, a United States officer.

Q. Now, do you know anything of the circumstances attending the transfer of any stock from the railroad company to Anderson county, or pretended transfer? If, so, state what the facts were as to the assignment by the county to the president of the company.

A. Yes, sir; I was a member of a committee that was appointed by some of the citizens there to watch the matter, and I was there during the filing out, issuing, and signing of these bonds; I suppose that is one of them; I have not looked at it; and during the transaction of the sale of the stock, or the purported sale or assignment, I was in the room, I think nearly all the time; any way I was when the most of it was done. There was a good deal of objection to it at the time——

The COURT: Never mind that.

Q. State what sort of a paper was given to the commissioners on which to make the assignment or transfer of their right to the stock to James F. Joy, or whoever it was.

A. My recollection is that it was a printed assignment on a blank

ceritficate of stock; it was not filled up. I suppose it would not be competent to say what the chairman of the board said when he signed it.

The COURT: I will not admit that.

Q. What office or position in the railroad company did James F. Joy occupy at the time?

A. I saw some letters in which he signed himself as president.

Q. Did he act as such?

Mr. PRATT: There is no question about that.

Q. This assignment was made to him?

A. That is my understanding.

Cross-examination by Mr. PRATT:

Q. I understand you; the assignment was made upon a blank certificate of stock.

A. Yes, sir.

Q. That is one of the blanks usually used?

A. Yes, sir.

Q. And the blank was not filled up when signed?

A. No, sir; not by anybody.

J. G. LINDSEY, recalled by the court:

Q. Captain Lindsey, can you state the date of the first publication of this notice in the newspaper?

A. As I stated before, the paper was issued on Thursday, and the order was made by the board on the night of the 11th of August, which was Wednesday, and the notice was not ready in time for that issue, but was published on the succeeding Thursday, which would make it the 19th of August; that is my recollection of it.

Q. Where is that paper; have you looked through the files?

A. I have looked carefully, and made inquiry everywhere from persons who would be likely to keep the files, and there is no complete file there.

Q. Have you examined the records in the county clerk's office?

A. Yes, sir; and have utterly failed to find any complete file.

And here the defendant rested its case.

And thereupon the plaintiff, to further sustain the issue upon his part, offered and read in evidence, in rebuttal, the depositions of Joseph S. Ford and J. S. Ranson, taken in this cause, which, omitting the formal parts of caption and certificate, are as follows:

210 My name is Joseph S. Ford; I am forty-four years of age, and reside at Kansas City, Missouri; I am comptroller of the Kansas City, Fort Scott & Gulf Railroad Company; I am going east, to Massachusetts, Sunday evening next, to be gone about two weeks; it is about 1,500 miles to where I am going; I collected at several times coupons on bonds issued by Anderson county, Kansas, to aid in the construction of the Leavenworth, Lawrence & Galveston railroad.

Q. For what years did you collect the coupons cut from those bonds?

A. 1879 and 1880—that is, coupons due January 1st of those years.

Q. From what bonds were those coupons cut?

A. I collected from numbers 21 to 60, both inclusive, and from 68 to 97, both inclusive, and from 181 to 200, both inclusive.

Q. Were those paid by the county the years they were due?

A. They were.

Q. How long has the Leavenworth, Lawrence & Galveston Railroad been in operation?

A. I know of its having been in operation for more than ten years.

Q. Were the bonds from which these coupons were cut, that you collected, the same issue of bonds from which the coupons here in suit were cut?

A. I understood them to be the same.

Cross-examination:

Q. From whom did you receive coupons which you mentioned as having collected in 1879 and 1880?

A. From different parties; generally of Charles Merriam, of Boston. In one instance from Hubbard Brothers, of Boston.

Q. Was Charles Merriam at that time a director in the Leavenworth, Lawrence & Galveston Railroad Company, or in the company which then owned the road constructed by the Leavenworth, Lawrence & Galveston Railroad Company?

A. I don't remember.

Q. He was not a director in the Leavenworth, Lawrence & Galveston Railroad Company?

A. I don't remember; I think he was a director in the subsequent company in existence in 1880; I don't remember whether he was in the Leavenworth, Lawrence & Galveston Railroad Company in 1879.

Q. Has the Leavenworth, Lawrence & Galveston Railroad Company constructed any railroad from Leavenworth to Lawrence?

A. I don't know.

Q. What is your best understanding about that?

A. Very much mixed. I have been acquainted intimately with the affairs of the road only since 1878.

Q. Do you, of your own personal knowledge, know what coupons are sued upon in this action?

A. I do not.

Redirect examination:

Q. Who are Hubbard Brothers?

A. Hubbard Brothers are bankers and brokers in Boston.

Q. These coupons were sent to you by Mr. Merriam and Hubbard Brothers as agents, were they?

A. They were.

Recross-examination:

Q. For whom was Charles Merriam acting as agent in sending you the coupons for collection?

A. For the owner of the coupons, as I understood.

Q. Who were the owners of the coupons?

A. I do not know; their names were sometimes given and sometimes not.

211 Q. Do you know what the names of any owner of these coupons which you say you collected from Anderson county in 1879 and 1880 were given; and, if so, whose names were given as owners?

A. Mr. Beal's name was given as the owner of these coupons; that is, the coupons were sent for collection for account of Mr. Beal.

Q. Do you mean the coupons of 1879?

A. I don't know whether his name was connected with the coupons of 1879, 1880, or 1881, but it was with some of those dates, and with these coupons to which I have referred.

Q. Do you know that Charles Merriam was not the owner of the coupons which he sent?

A. The correspondence indicated that he was not.

Q. Have you any other means of knowing that he was not the owner?

A. I have not.

Q. What coupons were sent you by Hubbard Brothers?

A. Coupons numbered from 21 to 40, inclusive, due January 1st, 1881.

Q. Is that all they sent you?

A. I think that was all Hubbard Brothers sent me.

Q. They had sent you no previous coupons?

A. I think not.

Q. Were these coupons that Hubbard Brothers sent paid?

A. They were not.

Q. When did they send them to you?

A. About the time of their maturity.

Q. Do you know who was the owner of these coupons Hubbard Brothers sent?

A. I do not.

(Signed) J. S. FORD.

WYLLYS C. RANSOM, a witness for and on behalf of said plaintiff, after being duly sworn, testifies as follows:

My age is 53 years; residence, Lansing, Ingham county, Michigan. I was auditor and assistant treasurer of the Leavenworth, Lawrence & Galveston Railroad Company from the first day of September, A. D. 1869, to the first day of January, 1875. Anderson county, Kansas, issued bonds to said railroad company, dated January 1st, 1870. My recollection is that there were one hundred and fifty bonds, each for ($1,000) one thousand dollars, and having thirty years to run to maturity, with interest coupons attached. While the railroad company held the bonds, I, as assistant treasurer, had them registered in the office of the auditor of the State of Kansas, in the latter part of March, 1872, pursuant to the statute of Kansas, shortly before that time enacted, providing for the registration of bonds of this character. I think D. W. Wilder was auditor of said State of Kansas, and his official stamp, showing exact date of the registry, will be found on the bonds; that thereupon the railroad company sold and

delivered the bonds for full value to various parties, and used the proceeds of such sale.

JOHN S. WHITFORD, appearing as attorney for above-named defendant, proceeds to cross-examine said witness as follows:

Q. How many bonds did you say were issued?

A. As I now recollect, there were one hundred and fifty, but as it was a long time ago, and as I state from memory, there might have been fifty more.

Q. Were you present when these bonds were issued?

A. No.

Q. Do you remember what day or date in March you had these bonds registered, as assistant treasurer of the railroad company?

A. I cannot fix the exact date, but I know it was in March.

Q. Who was State auditor when these bonds were registered?

A. My recollection is that D. W. Wilder was.

212 Q. To whom were these bonds, after registration, sold?

A. They were sold to different parties, Mr. H. H. Hunnewell, John I. Burnham, William H. Weld, of Boston, Massachusetts; Mr. F. W. Peck, of Chicago; James M. Walker, James F. Joy, and other parties who I don't recollect.

Q. Were these parties stockholders in the L., L. & G. R. R. Co.?

A. I am unable to say from my own knowledge whether they were or not.

Q. Who was president of the railroad at the time these bonds were issued?

A. James F. Joy was president.

Q. How long was James F. Joy president of this railroad company?

A. He resigned in 1870 or 1871. He was president from July or August, 1869.

Q. For what purpose were these bonds issued by Anderson county to the L., L. & G. R. R. Co.?

A. To aid in building the road.

Q. What was the method at that time of securing aid from this county for building the road?

A. They subscribed for so much stock, and paid their subscription with their bonds.

Q. What bargain did the railroad company make with Anderson county in regard to sale and transfer of the stock subscribed by said county?

A. Anderson county agreed to assign her certificate of stock, when it was issued, to Mr. Walker or Mr. Joy, I don't recollect which now, for the consideration of one dollar.

Q. Was there any certificate of stock ever issued by the railroad company to Anderson county.

A. I can't swear as to that, as I was not the custodian of the stock-certificate book.

Q. What is your recollection as to the railroad company's issuing stock?

A. I think it was done in some instances, and others not. I know

that it was in two instances—in Douglass and Franklin counties. I could not swear that it was done in any other counties.

Q. What did you learn officially of the arrangement between the railroad company and the Board of Commissioners of Anderson County in regard to the sale and transfer of the rights of Anderson county to the stock subscribed by said county on the books of the L., L. & G. R. R. Co.?

A. I learned they did subscribe for the stock of the railroad company. I know they issued their bonds to the whole amount of their subscription, because it (I) had the custody of the bonds for a considerable length of time. I know that they assigned their stock as they agreed to, or else the company would not have accepted their subscription or the bonds.

Q. Was not the right to the stock subscribed by Anderson county on the L., L. & G. R. R. Co.'s books (was?) to be sold to said railroad company for one dollar?

A. That is my understanding.

Q. Do you know the plaintiff, and how he obtained these bonds?

A. I do not.

(Signed) WYLLYS C. RANSOM.

And this was all the evidence that was offered in this case.

Thereupon said plaintiff requested the court to instruct the jury to find a verdict for the plaintiff; to the granting of which request the defendant at the time objected:

And thereupon the court instructed the jury to find a verdict for the plaintiff; to which instruction, order, and direction the defendant at the time duly excepted and excepts.

213 And said defendant prayed that this his bill of exceptions in that behalf might be allowed, which is accordingly done, and upon defendant's motion is ordered to be made a part of the record in this case. C. G. FOSTER, *Judge.*

(Endorsed:) No. 3785. Circuit court of the U. S., dist. of K's. Thos. P. Beal, plaintiff, *vs.* B'd of Co. Commissioners of Anderson Co., defendant. Transcript of stenographers' notes. Testimony of entire case & bill of exceptions. Jones & Tilley, law stenographers, northwest cor. Sixth and Broadway, Kansas City, Mo. Filed July 2, 1883. A. S. Thomas, clerk. By Frank J. Thomas, deputy.

214 UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas, begun and held at the city of Topeka, in said district, on Monday, the 26th day of November, 1883, proceedings were had and appear of record, in words and figures following, to wit:

THURSDAY, *Nov.* 29, 1883.

THOS. P. BEAL.
vs.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON. } 3785.

Defendants' motion for a new trial came on to be heard, and was

was argued by counsel. Upon consideration whereof, it is ordered by the court that said motion be, and the same is hereby, overruled.

In the Circuit Court of the United States for the District of Kansas.

THOMAS P. BEAL, Pl'ff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendants. } 3784.

For value received by each of the parties hereto, they hereby stipulate and agree as follows:

1. Said defendant releases and waives all right to sue out or obtain a writ of error to have the judgment and proceedings herein reviewed by the Supreme Court of the United States after one hundred and twenty days from the date hereof, but it may sue out such writ of error at any time within 120 days from the date hereof.

2. If such writ of error be issued within 120 days from the date hereof the case shall be submitted for determination on printed arguments, to be filed within the first sixty days of the next term of said Supreme Court, according to rule 20 of said supreme court.

3. If such writ of error be issued within the time above limited, but said defendant shall fail to file printed arguments, and on its part submit the case under said rule within said ninety days, then such writ of error shall, on motion of said Beal, be dismissed. Any writ of error sued out as issued after 120 days from the date hereof to review the judgments and proceedings herein shall, on motion of said Beal, be dismissed.

Dated Dec. 10, 1883.

PRATT, BRUMBACK & FERREY,
Att'y for Pl'ff.

A. BERGEN,
Attorney for Defendant.

Endorsed: No. 3785. Thomas P. Beal *vs.* Board of Co. Commissioners of County of Anderson. Stipulation as to prosecution of writ of error. Filed Dec. 17, 1883. A. S. Thomas, clerk.

215 Supreme Court of the United States.

THOMAS P. BEAL, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Defendant. } No. 3785.

Know all men by these presents, that we, The Board of County Commissioners of the County of Anderson, as principal, and James W. Rice and S. A. Herriman as sureties, of the county of Anderson, State of Kansas, are held and firmly bound unto Thomas P. Beal, of the city of Boston, State of Massachusetts, in the sum of five hundred dollars, to be paid to the said Thomas P. Beal, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and

each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, dated this 17th day of Jannary, 1884.

Whereas the said Board of County Commissioners of the County of Anderson hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the circuit court of the United States for the district of Kansas:

Now, therefore, the condition of this obligation is such that if the above-named Board of County Commissioners of the County of Anderson shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

In witness whereof, said Board of County Commissioners of the County of Anderson has caused these presents to be subscribed by its chairman, and the seal of said county to be hereto affixed, attested by its clerk, and said sureties have hereto affixed their hands and seals the day and year aforesaid.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ANDERSON,
By N. J. REYNOLDS, *Chairman.*
JAMES W. RICE. [L. S.]
S. A. HERRIMAN. [L. S.]

Attest: A. D. McFADDEN, *County Clerk.*

Bond approved:
C. G. FOSTER, *Judge.*

(Endorsed:) No. 3785. Thomas P. Beal *vs.* Board of County Commissioners of Anderson. Bond on writ of error. Filed Feb. 28, 1884. A. S. Thomas, clerk.

216 UNITED STATES OF AMERICA, } *ss:*
District of Kansas, }

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of the record of said court of all the proceedings therein in the action of Thomas P. Beal *vs.* Board of County Commissioners of the County of Anderson, No. 3785, in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 28 day of Feb., A. D. 1884.

[SEAL.] A. S. THOMAS, *Clerk.*

217 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Kansas, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you,

between Thomas P. Beal, plaintiff, and Board of County Commissioners of the County of Anderson, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 28th day of February, A. D. 1884.

[SEAL.] A. S. THOMAS,
Clerk of the Circuit Court of the United States for the District of Kansas.

[Endorsed:] No. 3785. Board of County Commissioners of the County of Anderson, plaintiff in error, *vs.* Thomas P. Beal, defendant in error. Writ of error. Filed Feb. 28, 1884. A. S. Thomas, clerk.

218 UNITED STATES OF AMERICA, *ss:*

To Thomas P. Beall, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Kansas, wherein the Board of County Commissioners of the County of Anderson is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of February, A. D. 1884.

C. G. FOSTER,
Dist. Judge.

Rec'd copy of above citation May 8, 1884.
THOMAS P. BEAL,
By PRATT, BRUMBACK & FERREY,
His Attorneys.

[Endorsed:] No. 3785. The Board of County Commissioners of the County of Anderson, plaintiff in error, *vs.* Thomas P. Beal, defendant in error. Citation.

219 Supreme Court of the United States. Of October Term, A. D. 1884.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Plaintiff in Error,

vs.

THOMAS P. BEAL, Defendant in Error.

Afterwards, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Board of County Commissioners of the County of Anderson, by Abram Bergen, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. That the said circuit court of the United States for the district of Kansas erred in overruling the demurrer of said Board of County Commissioners of the County of Anderson, defendant below, to the evidence on the part of said Thomas P. Beal, plaintiff below.

2. That said circuit court erred in instructing the jury to find a verdict for said Thomas P. Beal, plaintiff below; to all which orders, instructions, and directions of the court said Board of County Commissioners of the County of Anderson at the time duly excepted.

3. That said judgment was given for the said Thomas P. Beal when it ought to have been given for said Board of County Commissioners of the County of Anderson, according to the law of the land.

And the said Board of County Commissioners of the County of Anderson prays that the judgment aforesaid may be reversed
220 and annulled and altogether held for nought, and that said board may be restored to all things which it has lost by occasion of said judgment.

A. BERGEN,
Attorney for Plaintiff in Error.

[Endorsed:] Board of County Commissioners of the County of Anderson *vs.* Thomas P. Beal. Assignment of errors. A. Bergen, att'y for pl'ff in error, Topeka, Kans.

221 *Stipulation as to Printing Record.*

Supreme Court of the United States.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ANDERSON, Pl'ff in Error,

vs.

THOMAS P. BEAL, Def't in Error.

In order to save unnecessary prolixity and expense of printing, it is mutually agreed and stipulated that in printing the record in this case the same shall be copied and printed to the end of the second count of the declaration and petition, on the second page of the transcript, and that the remaining 178 counts, to the end of page 91 of the transcript, be omitted, and instead thereof use these words:

"Here follow 178 other like counts, each upon a separate and like coupon, except number and time of maturity."

Then copy and print from page 92 to page 98 of the transcript, both included, to the end of the second count of amended declaration and petition, and omit from the printing the remaining 178 counts of the amended declaration and petition, being from page 99 to page 187 of the transcript, and instead thereof use these words:

"Here follow 178 other like counts, each upon a separate and like coupon, except number and time of maturity, amounting in all to $12,600, besides interest from Jan. 1, 1881, on $6,300.00, and from Jan. 1, 1882, on $6,300.00."

Then print the remainder of transcript.

A. BERGEN,
Att'y for Pl'ff in Error.
PRATT, BRUMBACK & FERREY,
Att'ys for Def't in Error.

[Endorsed:] Supreme Court U. S. 1883, October term. No. 851. The Board of Co. Com'rs of the County of Anderson *vs.* Thomas P. Beal. Stipulation as to printing record, omitting portions. Office Supreme Court U. S. Filed May 24, 1884. James H. McKenney, clerk.

Endorsed on cover: Kansas C. C. U. S. No. 851. The Board of County Commissioners of the County of Anderson, plaintiff in error, *vs.* Thomas P. Beal. Filed 24th May, 1884.

113-227

Office Supreme Court U. S.
FILED
DEC 29 1884
JAMES H. McKENNEY
Clerk

PLAINTIFF'S BRIEF.

Supreme Court of the United States.

OCTOBER TERM, 1884. NO. 851.

THE BOARD OF COUNTY COMMISSIONERS, OF THE COUNTY OF ANDERSON, *Plff in Error*,

vs.

THOMAS P. BEAL, *Def't in Error*.

A. BERGEN,
Attorney for Plaintiff.

C. F. BOLTON PR. CO., TOPEKA, KANSAS.

Then copy and print from page 92 to page 98 of the transcript, both included, to the end of the second count of amended declaration and petition, and omit from the printing the remaining 178 counts of the amended declaration and petition, being from page 99 to page 187 of the transcript, and instead thereof use these words:

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113-227

Office Supreme Court U. S.
FILED.
DEC 29 1884
JAMES H. McKENNEY,
CLERK.

PLAINTIFF'S BRIEF.

Supreme Court of the United States.

OCTOBER TERM, 1884. NO. 851.

THE BOARD OF COUNTY COMMISSIONERS,
OF THE COUNTY OF ANDERSON, *Pl'ff in Error*,
vs.
THOMAS P. BEAL, *Def't in Error*.

A. BERGEN,
Attorney for Plaintiff.

A. E. SEXTON PR. CO., TOPEKA, KANSAS.

Supreme Court of the United States.

OCTOBER TERM, 1884. NO. 851.

THE BOARD OF COUNTY COMMISSIONERS,
OF THE COUNTY OF ANDERSON, *Pl'ff in Error*,

vs.

THOMAS P. BEAL, *Def't in Error*.

STATEMENT.

This action was commenced in the Circuit Court of the United States for the District of Kansas, by the defendant in error against the plaintiff in error, to recover the amount of certain interest coupons upon a portion of a series of $200,000 of bonds alleged to have been issued by Anderson County to the Leavenworth, Lawrence & Galveston Railroad Company, or bearer, dated January 1, 1870, and reciting that they were "executed and issued under the provisions of, and in conformity to an act of the Legislature of the State of Kansas, approved February 26, 1866, entitled 'An act to amend an act entitled An act to authorize counties and cities to issue bonds to railroad companies,' approved February 10, 1865."

The plaintiff's amended petition, on which the case was tried, alleged that the bonds "erroneously recited that they were issued under the provisions of said act; whereas said bonds were executed and issued under the

provisions of, and in conformity to, the laws of the State of Kansas, then in force, and in pursuance to the vote of the electors of Anderson County, of September 13, 1869, at an election regularly and duly ordered and held for that purpose." (p. r. 7.)

The defendant's answer contained a general denial of the allegations of the plaintiff's petition, and averred, in substance, that said bonds were issued without any consideration therefor, and without authority of law; and that thirty days' notice was not given of the special election held on the 13th day of September, 1869, upon the question of issuing said bonds; that no stock in said railroad company was ever issued to said county; that the stock of said railroad company was more valuable than the bonds of said county, and that said railroad company required of, and received from the commissioners of said county, a transfer of the stock to be acquired by said county for said bonds, to the president of said company, for the nominal consideration of one dollar, before said company would or did receive any subscription of stock in behalf of said county, and before the issue of said bonds, and that the plaintiff had notice of all these facts. (p. r. 11.)

The plaintiff replied by a general denial of the allegations of the answer.

The case was tried before a court and jury on June 13, 1883.

Upon the trial the plaintiff offered and read in evidence, one of the bonds and the coupons sued upon, and the certificate of registration dated March 27, 1872, by A. Thoman, Auditor of the State of Kansas, and a guaranty of payment of the bonds and coupons by the Leavenworth, Lawrence & Galveston Railroad Company, indorsed upon the bonds, (p. r. 21, 22), and an order of the Board of County Commissioners of said county, dated

August 11, 1869, for an election to be held Sept. 13, 1869, upon the question of subscribing $200,000 of stock in said railroad company and issuing the bonds of the county in payment therefor. (p. r. 22.)

Also a copy of the records of the county, dated Sept. 17, 1869, wherein it was shown and certified by the Board of County Commissioners, as a board of canvassers of the vote, that at said election "the proposition *to subscribe stock* to the Leavenworth, Lawrence & Galveston Railroad Company received 551 votes, and that there were 372 votes against said proposition." (p. r. 22, 23.)

Also a copy of an order of the Board of County Commissioners of said county, made July 8, 1870, authorizing James F. Joy to deliver said bonds to said railroad company, upon returning the coupons of said bonds, and the amount of interest accrued upon said bonds between the first day of January and March 1870. (p. r. 23, 24.)

Also a copy of an order of said Board dated Sept. 5, 1870, levying taxes for the year 1870, among which taxes was "the sum of 7½ mills per each dollar, to pay ten months' interest on the bonds of said county, issued to the Leavenworth, Lawrence & Galveston Railroad Company, for the year 1870;" to which order J. B. Lowry, one of the members of said Board of County Commissioners entered his protest of record, because

"Said bonds are not legally in the hands of said railroad company, if in the hands of said railroad company at all." (p. r. 24.)

"The plaintiff also offered in evidence a duly certified copy of the registration of the bonds in question in the office of the Auditor of State, and then rested his case. (p. r. 25.)

"And thereupon the defendant demurred to the evidence, and asked the court to declare the law to be that upon the pleadings and proofs, the plaintiff was not en-

titled to recover, which instruction the court refused to give, and to which refusal to so instruct, the defendant at the time duly excepted." (p. r. 25.)

Thereupon the defendant introduced evidence as follows: A copy of a resolution of the Board of County Commissioners of said county, dated Nov. 5, 1869, subscribing for $200,000 of stock in said railroad company, and selling and transferring said stock to James F. Joy, president of said railroad company, for $1. (p. r. 25)

And the testimony of J. G. Lindsay, that he was County Attorney of Anderson County in 1869, that no stock in said railroad company was issued to the county; that at the time the bonds were signed and delivered, the chairman and clerk of the Board of County Commissioners made and delivered to James F. Joy, president of said railroad company, a transfer and assignment of the stock of said county in said company, written upon a blank certificate of stock, which had not been signed by any officer of the company or any person in behalf of the company; and that notice was given of the election upon the question of issuing said bonds for only 24 days, including both the day of giving the notice and the day of the election; and that the railroad was never built from Leavenworth to Garnett, though the company constructed a road to Garnett in March, 1870. (p. r. 25-27, 35.)

The defendant also introduced Geo. M. Everline as a witness, who testified substantially, that the length of the time of the notice was twenty days, running over that a day or two; that it was published but three times, and the first publication was on the 18th day of August. (p. r. 31-33).

Also J. T. Lanter, who testified that he had resided in Anderson County 26 years; resided there in 1869, and then occupied a room in the court house as an officer of

the United States; that Elias Norris, Sheriff of Anderson County in 1869, had removed to California; that J. H. Williams, County Clerk in 1869, had been absent 6 or 8 years, it having been rumored that he had gone to Texas, and then that he was down in Missouri somewhere, and did not know where he was; and that of the three County Commissioners in 1869, one was dead, another removed to parts unknown, and the other, at the time of the trial, incompetent to be a witness on account of age and bodily and mental infirmity, and that the stock of the county was assigned substantially as alleged by the defendant. (p. r. 33 35.)

The plaintiff in rebuttal read the deposition of Joseph S. Ford, who testified that he collected at several times coupons on bonds issued by Anderson County to the Leavenworth, Lawrence & Galveston Railroad, for the interest due Januaay 1, 1879, and January 1, 1880, on bonds numbered from 21 to 60, and from 68 to 97, and from 181 to 200, inclusive. They were paid by the county in the year they were due, and, as he understood, were coupons cut from the same issue of bonds from which the coupons here in suit were cut. (p. r. 35-37.)

Also the deposition of Wyllis C. Ransom was introduced by the plaintiff in rebuttal, who deposed that he was Auditor and Assistant Treasurer of said railroad company from September, 1869, to January, 1875. Anderson County issued bonds to the railroad company dated January 1, 1870. His recollection was that there were 150 bonds of $1,000 each. He had them registered in the office of the Auditor of the State of Kansas, in the latter part of March, 1872. Witness thinks that D. W. Wilder was Auditor of the State, and that thereupon the railroad company sold and delivered the bonds for full value to various parties, and used the proceeds of such sale.

On cross examination the witness, Wyllis C. Ransom, deposed: "I know they (the Board of Commissioners of Anderson County), issued their bonds to the whole amount of their subscription, because I had the custody of the bonds for a considerable length of time. I know that they assigned their stock as they agreed to, or else the company would not have accepted their subscription or the bonds." The right to the stock subscribed by Anderson County on the railroad company's books, was to be sold to said railroad company for one dollar. (p. r. 37-39.)

This was all the evidence in the case.

Thereupon said plaintiff requested the court to instruct the jury to find a verdict for the plaintiff; to the granting of which request the defendant at the time objected. "And thereupon the court instructed the jury to find a verdict for the plaintiff; to which instruction, order and direction, the defendant at the time duly excepted." (p. r. 39.)

Thereupon a verdict and judgment were rendered for the plaintiff for $14,321.34 and costs. (p. r. 13.)

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns the following errors in the record, upon which it relies for a reversal of the judgment of the court below:

First—That the court below erred in overruling the demurrer of said Board of County Commissioners of the County of Anderson, defendant below, to the evidence on the part of said Thomas P. Beal, plaintiff below.

Second—That said Circuit Court erred in instructing the jury to find a verdict for said Thomas P. Beal, plaintiff below.

ARGUMENT.

Points of law and fact.

The Kansas statute of 1866, under which the bonds recited that they were issued, and under which, as it ap-

pears from the evidence, they were issued, so far as they complied with any law, required only twenty days' notice of the election. The law in force in 1869 and 1870, at the time the proceedings were had, required thirty days' notice of the election.

The only questions which the plaintiff in error presents, are whether the bonds were rendered invalid by the failure to give *thirty* days' notice of the special election, not more than twenty-four days' notice having been given, when the law required thirty, and by the want of consideration for the bonds, in the failure and refusal of the railroad company to issue and deliver the stock in the company, which the law specified as the only consideration for which the bonds might be given; and whether the plaintiff is protected by any recitals in the bond or otherwise, and whether the bonds do not bear on their face notice to all purchasers that only twenty days' notice of the election was given, and whether these questions are not *res judicata* as to the parties to this suit.

I.

The bonds bore date January 1, 1870. (p. r. 9, 21.) They were executed about November 7, 1869. (p. r. 26.) They contained the following recital:

"This bond is executed and issued under the provisions "of, and in conformity to an act of the Legislature of "the State of Kansas, approved February 26, 1866, en- "titled 'An act to amend an act entitled an act to author- "ize counties and cities to issue bonds to railroad com- "panies,' approved February 10, 1865. and in pursuance "to the vote of the electors of Anderson County, of Sept. "13, 1869. (p. r. 9, 21.)

The act of the Legislature, entitled as above, (*Kans. Sess. Laws* 1866, pp. 72, 73), so far as it effects the points in this case, reads as follows:

"Section 1. That section one of 'An act to authorize counties and cities to issue bonds to railroad companies,' approved February 10, 1865, be amended to read as follows: Section 1. That the Board of County Commissioners of any county, to, into, through, from or near which, whether in this or any other State, any railroad is or may be located, may subscribe to the capital stock of any such railroad corporation, in the name and for the benefit of such county, not exceeding in amount the sum of $300,000 in any one corporation, and may issue the bonds of "such county in such amounts as they may "deem best, in payment of such stock; Provided, *
" * * but no such bonds shall be issued until "the question shall be first submitted to a vote of the "qualified electors of the county, at some general elec- "tion, or at some special election to be called by the Board "of County Commissioners, by first giving twenty days "notice in some newspaper published and having general "circulation in the county; or, in case there be no paper "[published] in the county, then by written or printed "notices posted up in each election precinct, twenty days "previous to the day of such election; and in submitting "said question said Board of Commissioners shall direct "in what manner the ballots shall be cast. * *
"Approved February 26, 1866. S. J. Crawford, Governor."

This act of the Legislature of Kansas of 1866, which required only twenty days' notice of the election to be given, was repealed by the Legislature of the State by the general statutes of 1868, (ch. 119, pp. 1123, 1127) wherein, after declaring, in Sec. 1 what acts shall constitute the general statutes of Kansas (enumerating them in more than four pages, and not including or referring to the above act of February 26, 1866), is the following:

"Sec. 2. All other acts of a general nature embodied "or re-enacted, in whole or in part, in any of the statutes

"hereinbefore enumerated, or repugnant thereto, are hereby repealed."

And in lieu of said act of 1866, was the general statute of 1868, entitled "Corporations," covering the entire subject matter of the prior act with new and different provisions, of which act the following sections are a portion: (pp. 203, 204.)

"Sec. 51. The Board of County Commissioners of any "county, the City Council of any city or the Trustees of "any incorporated town, may take stock for such county, "city or town, in, or loan the credit thereof to any rail-"way company duly organized under this or any other "law of the State; but a majority of the qualified voters "of such county, city or town must, at a regular or special "election to be held therein, first assent to such subscrip-"tion, before it can be made."

"Sec. 52. A special election may be ordered by the "County Board of any county, the City Council of any "city or the corporate authorities of any town or village, "at any time, for the purpose of ascertaining the sense of "the voters of such county, city, town or village, as pre-"scribed in the preceding section. Notice shall be given "of any such election at least sixty days before the hold-"ing of the same."

Thus by the law of 1868, sixty days' notice of the election was required.

The statute of 1868 was repealed by the statute of 1869, which took effect February 27, 1869, and which was the law in force at the time of all the proceedings relative to the issue of these bonds. (*Kan. Session Laws of* 1869, pp. 108-110).

The following are the sections of this statute relating to this subject:

"An Act to amend sections 51, 52 and 53 of an act en-"titled an act concerning private corporations.

"Be it enacted by the Legislature of the State of Kan-
"sas:

"Section 1. That section 51 of chapter 23, general laws
"of 1868, be, and the same is hereby amended so as to
"read as follows:

"Section 51. The Board of County Commissioners of
"any county, the City Council of any city or the Trustees
"of any incorporated town, may subscribe for and take
"stock for such county, city or town in, or loan the credit
"thereof to any railway company duly organized under
"this or any other law of the State or Territory of Kan-
"sas, upon such conditions as may be prescribed by the
"aforesaid county, city or town authorities. Provided,
"however, that a majority of the qualified voters of such
"county, city or town, voting upon the question of sub-
"scribing and taking such stock, shall, at a regular or
"special election to be held therein, first assent to such
"subscription and the terms and conditions prescribed
"as aforesaid, upon which the same shall be made; and
"provided, further, that when such assent shall have
"been given, to such subscription as aforesaid, it shall be
"the duty of the said county, city or town authorities, as
"the case may be, to make such subscription.

"Section 2. That section 52 of said chapter 23, be,
"and the same is hereby amended so as to read as follows:

"Section 52. A special election may be ordered by the
"County Commissioners of any county, the City Council
"of any city or the corporate authorities of any town,
"at any time, for the purpose of ascertaining the sense of
"the voters of such county, city or town, as contemplated
"in the preceding section. Notice of such election shall
"be given at least thirty days before the holding of the
"same, and the question or questions to be submitted
"thereat shall be set forth in such notice.

"Section 3. That section 53 of said chapter 23, be, "and the same is hereby amended so as to read as follows:

"Section 53. Upon the making of such subscription, "such county, city or town, shall thereupon become, like "other subscribers to such stock, entitled to the privileges "granted, and subject to the same liabilities imposed by "this act, or by the charter of the company in which such "stock is taken, except as the same shall be varied and "limited by the terms and conditions upon which the "said subscription shall have been authorized and made. "And it shall be the duty of the Board of County Com- "missioners or City Council or Trustees of the town "making such subscription as aforesaid, to pay for the "same, and the stock thereby agreed to be taken by such "county, city or town, by issuing to the company entitled "thereto, the bonds of such county, city or town, at par, "payable at a time to be fixed, not exceeding thirty years "from the date thereof, bearing interest at the rate of 7 "per cent. per annum, with interest coupons attached.

* * * * * * *

"Section 4. That sections 51, 52 and 53 of chapter 23, of "general statutes of 1868, of which the foregoing sections "are amendatory, be, and the same are hereby repealed."

That the statute of 1866 had been repealed, and that the statute of 1869 was the law in force during the time of all the proceedings towards the issue of these bonds.

See *Burgess vs. Memphis, C. & N. W. R. R. Co.*, 18, Kans. 53.

We suppose this proposition as to the repeal of the act of 1866, will not be contested in this court, as it was admitted by counsel for defendant in error in the court below, and impliedly by the allegation in his petition, that the bonds *erroneously* recited that they were issued in conformity to the act of 1866.

II.

It is held that a recital on bonds, that they were issued pursuant to, and in accordance with a certain statute, is equivalent to a statement in detail on the bonds of the performance of every act required by that statute. "Every dealer in municipal bonds, which upon their face "refer to the statute under which they were issued, is "bound to take notice of the statute and of all its re-"quirements."

McClure vs. T'p. of Oxford, 94 U. S., 432.

"Purchasers in good faith are required to know what the statute contains," etc.

Lewis vs. Commrs., etc., 105 U. S., 749.

By the recital upon the bonds in this case, that they were issued pursuant to and in accordance with the Act of 1866, it was impliedly declared that *twenty* days' notice of the election had been given. The law required *thirty*. If it had been recited on the face of the bonds that twenty days' notice of the election had been given, the plaintiff must have taken notice of that fact, as well as of the existing law which required thirty days' notice to be given. Under these circumstances we claim that it was obligatory upon the plaintiff below to show that thirty days' notice of the election was given, and not having offered any evidence upon this subject that he failed in his proof. It was an affirmative proposition in substance alleged by him, and we claim that the burden of proving it was upon the plaintiff. But if the burden of proving the negative was upon the defendant below, we claim that defendant introduced sufficient evidence to establish the negative, at least *prima facie*, and in the absence of any evidence to the contrary, (see p. r. pp. 26, 33), and that the proceedings were really under the act of 1866, as recited in the bonds, and that said recital was not erroneous, or false, but true and in accordance with the facts.

That the notice should be given for the time required by law, is material. This was so held in *McClure vs. Township of Oxford*, 94 U. S. 433, where the lack of the requisite thirty days' notice was held to be a fatal defect, notwithstanding that the plaintiff was a purchaser for value, and in that case the court says:

"If a purchaser may be—as he sometimes is—protected by false recitals in municipal bonds, the municipality ought to have the benefit of those that are true."

In *Buchannan vs. Litchfield*, 102 U. S. 292, the court held that the bonds then in suit were subject to defenses in the hands of purchasers for value, although they recited that they were issued pursuant to the statute, and under ordinances of the city. This was so decided because the Constitution of the State contained certain requirements as to the issue of bonds, and certain limitations upon the power to issue, not mentioned in the statute, and the bonds did not recite that they were issued in accordance with the Constitution; and its provisions had not been complied with in the issue of the bonds.

III.

In *Commissioners of Johnson County vs. Jannary*, 94 U. S. p. 202, the plaintiff urged, in the court below, that he found support for his position in this action.

In that case the bonds were issued in 1869, and recited that they had been issued under the Kansas statute of 1868, which had been repealed at the time of their issue. The court held that the bonds were valid. This does not necessarily militate against our position in this case. The act of 1868 required all to be done which was required by the act of 1869, and more, in this, that sixty days' notice of the election was required in 1868, and but thirty in 1869. Hence, in that case, if the bonds there

in suit had recited in detail the performance of everything required by the act of 1868, including the giving of the sixty days' notice, this would have been in the same words, a substantial recital that each and every act required by the law of 1869, had been done, and would have shown that the Commissioners were authorized by law to issue the bonds. The recital that they were issued in accordance with the statute of 1868 had the same effect. Hence, in that case, the maxim *falsa demonstratio non nocet*, and its doctrines referred to by the court, were applicable and eminently appropriate.

But in the present case there was no *falsa demonstratio*. The recital is not proved to be false, but is proved to be true. In the present case the bonds recite that they were issued under the provisions of, and in conformity to the act of 1866. This was not equivalent to an allegation that they were issued according to law. At most, it cannot be anything more than would have been recitals of the fulfillment of each and every requirement of that act, including the recital that twenty days' notice of the election had been given, while at the same time every purchaser was bound to take notice of the fact that the law then in force required thirty days' notice.

Besides in *Commissioners of Johnson County vs. January*, the stock had been issued by the railroad company to the county, and had been retained by the county without any offer to surrender it. This fact and others, which do not exist in the present case, were mentioned by the court as constituting cogent equitable reasons why those bonds should not be held invalid.

IV.

In the plaintiff's declaration it is alleged that the bonds were registered in the office of the Auditor of the

State of Kansas, and that he certified them in accordance with the statute of Kansas. (*Laws of Kansas*, 1872, ch. 68, p. 110.) The plaintiff proved this very carefully, and it was urged by plaintiff, and mentioned by the court below, as a sufficient ground alone, for instructing the jury to find for the plaintiff. The bonds in this case were issued before that act took effect; and that such registration and certificate were nugatory is definitely decided in *Bissell vs. Spring Valley Township*, 110 U. S., 162.

V.

It may be claimed by the defendant in error, that the evidence did not show conclusively that notice of the election had not been given for thirty days. The plaintiff in error contends that in the circumstances of this case, and it being an affirmative proposition, and in view of the recital on the bonds, the burden of proof was upon the plaintiff below, to show that thirty days' notice of the election had been given. But if the court should hold that it was incumbent upon the defendant below to prove the negative, we submit to the court the proposition that sufficient evidence was introduced, to be submitted to the jury, and sufficient to establish the fact that thirty days' notice was not given; that not more than twenty-four days' notice was given, and that the parties to the transaction supposed twenty days' notice to be sufficient, as provided in the Act of 1866.

The testimony of the County Commissioners, Sheriff or County Clerk could not be had at the trial. If it could have been obtained, it is not probable that they, nor any one else could have known anything more about the facts than J. G. Lindsay, Esq., then County Attorney, who wrote out and prepared the notice which was pub-

lished, and who, as is shown by the testimony, evidently had definite knowledge upon the subject. (p. r. p. 27.)

It may be claimed that the notices of the election might have been given by posting them up. The act of 1869 did not declare how the notice should be published of a special election upon the question of issuing bonds to railroad companies. The general election law then in force, General Statutes of Kansas, 1868, ch. 36, p. 404, sec. 5, required a notice to "be posted up at each of the "places where the elections are appointed to be held, and "inserted in some newspaper published in the county, if "any be published therein." The Kansas Statute of 1866, ch. 24, p. 23, sec. 1, above copied, only required "twenty "days' notice in some newspaper published and having "general circulation in the county, or in case there be no "paper published in the county, then by written or printed "notices posted up in each election precinct twenty days "previous to the day of such election; and in submitting "said question, said Board of Commissioners shall direct "in what manner the ballots shall be cast."

The evidence shows that there was a newspaper, and only one newspaper, published in the county. The law certainly required the publication of the notice in a newspaper. In *Scott vs. Paulen*, 15 Kans. p. 162-168, in speaking of another statute the Supreme Court of Kansas says:

"The statute requires thirty days' notice of the election. "The notice was published in a weekly newspaper, the "first publication more than thirty days prior to the elec- "tion, and in each successive issue to the time of the "election." This was sufficient. *McCurdy vs. Baker*, "11 Kans., 111; *Whitaker vs. Beach*, 12 Kans., 492."

The evidence of the witnesses who noticed this matter closely, shows that they did not know of the posting of

any notices, but did know of the twenty days publication in a newspaper, all tending to show that the proceedings were conducted under the law of 1866.

VI.

The plaintiff in error, defendant below, claims that these questions are *res judicata*, and that whatever of difficulty or uncertainty in the evidence there may have been, is cured and set at rest in the suit of the same parties, to-wit: *Thomas P. Beal vs. the Board of County Commissioners of the County of Anderson*, No. 4311, in the Circuit Court of the United States for the District of Kansas, and which was brought to this court by said Board of County Commissioners of the County of Anderson, and numbered in this court 1273, of the October term, 1883. In that case the suit was brought upon coupons cut from the same bonds as the coupons sued on in the present case, and the declaration was in the same form as the declaration in this case. In that case, with the purpose on the part of the defendant, and as he supposed, also on the part of the plaintiff, to present to this court the naked questions of law arising in the case, divested of questions as to the kind, weight and sufficiency of evidence, the defendant below, by mutual agreement of parties, filed an amended answer, omitting a general denial, expressly admitting nearly all the allegations of the plaintiff, and making only such denials and averments against the plaintiff's claims as the evidence in the present case proves, or tends to prove. To this answer the plaintiff demurred solely because it did not state facts sufficient to constitute a defense, thus presenting precisely the questions which are in this case, except as to the weight of evidence. The demurrer

was submitted to the Circuit Court, which, in accordance with its rulings upon the law in the present case, held the answer to be insufficient, sustained the demurrer thereto, and rendered judgment for the plaintiff. The defendant below brought the case to the Supreme Court March, 25, 1884, assigning as error the order sustaining the plaintiff's demurrer to the defendant's answer. On April 3, 1884, the plaintiff below, Thomas P. Beal, by his counsel, appeared in this court, and upon his written admission that the assignment of errors was good and well taken, and upon his motion it was ordered and adjudged by this court that the judgment of the Circuit Court in this cause be reversed.

In order that the court may readily see what that answer contained, a full and exact copy of it is here given.

"IN THE

"Circuit Court of the United States

"FOR THE DISTRICT OF KANSAS.

"THOMAS P. BEAL, *Pl'ff*,
vs.
"THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ANDERSON, *Def't*.

"AMENDED ANSWER.

"Now comes the said defendant, the Board of County Commissioners of the County of Anderson, by its attorney, A. Bergen, and for its amended answer herein filed by consent of parties, and by leave of the court:

"Admits that said plaintiff is a citizen of the State of Massachusetts, and that said defendant is and was a municipal corporation created, existing and subject to be sued, as alleged in said plaintiff's petition;

And admits that said defendant made the several bonds and coupons mentioned in said petition, and of which a copy is attached to said petition, and issued the same to the Leavenworth, Lawrence & Galveston Railroad Company;

"And admits that said bonds were duly registered in the office of the Auditor of the State of Kansas, and that as each coupon for such annual interest falling due prior to January 1, 1881, matured, the same was paid by the

officers of said county, with the proceeds of a tax levied and collected each year by said county from its taxpayers for that purpose;

"And defendant admits the making of said several coupons attached to said bonds as alleged in said petition, and that a true copy of each of said bonds, coupons and certificate of registry endorsed thereon by the Auditor of State, except as to numbers and amounts, is annexed to said plaintiff's petition;

"And defendant admits that after said registration, and before said coupons, or any of them, by their terms became due and payable, they, and each of them, and the bonds to which they were respectively attached, were sold for value to various parties by said railroad company, and came to and for value became the property of said plaintiff, who ever since has been, and still is the lawful owner and holder thereof; and that when said coupons, and each of them, by their terms became due and payable, the same, and each of them were duly presented at the place of payment therein and in said bond mentioned, and payment demanded, which was refused, and that said defendant has not paid said coupons or any of them.

"And defendant admits and avers that said bond recited that it was executed and issued under the provisions of, and in conformity to an act of the Legislature of the State of Kansas, approved February 26, 1866, entitled an 'Act to amend an act entitled an act to authorize counties and cities to issue bonds to railroad companies,' approved February 10, 1865; but said defendant denies that said bond erroneously made said last mentioned recital; and denies that said bonds or any of them were executed and issued under the provisions of, and in conformity to the laws of the State of Kansas then in force.

"And said defendant admits that said bonds and coupons were executed and issued in pursuance to the vote of the electors of Anderson County, of September 13, 1869, upon an order of the Board of County Commissioners of said county, dated August 11, 1869, for said election, and that the vote cast at said election was duly canvassed by said Board on September 17, 1869, who, as the result of said canvass of said vote found, and declared that the proposition to subscribe stock to said Leavenworth, Lawrence & Galveston Railroad Company received 551 votes, and that there were 372 votes against said proposition, but denies that said election, or any election was regularly and duly ordered and held for that purpose, and denies that said defendant is indebted to said plaintiff upon said coupons, or either of them, in any amount whatever.

"And said defendant states and avers that said bonds and coupons mentioned in plaintiff's petition were issued under the provisions of, and in conformity to said act of the Legislature, approved February 26, 1866, which required but twenty days' notice of the election to be given. That long before said vote was taken or said bonds issued, said act of the Legislature had been repealed; that notice of the special election ordered by the County Commissioners of said county, for the purpose of ascertaining the sense of the voters of said county upon the question of subscribing for, and taking stock in the said Leavenworth, Lawrence & Galveston Railroad Company for said county, and issuing the bonds of said county in payment for said stock, held on said 13th day of September, 1869, was not given for thirty days before the holding of said election, as required by the law then in force, but was given for only twenty-four days; that no stock in said railroad company was ever issued to, or acquired by said county; that on the 13th day of September, 1869, and

from that time till the 1st day of January, 1870, the stock of, and in said company was worth more, to-wit: a greater per cent. upon the dollar thereof, than the bonds of said county; and the said railroad was never willing and never offered to and never did issue any stock in said railroad company to said county, but always refused so to do, and refused to permit said county to own or acquire any stock in said railroad company; and before said railroad company would or did permit said county to subscribe for stock in said railroad company, it required of said county that said $200,000 of county bonds, (upon some of the coupons of which this suit is brought), should be issued and delivered to James F. Joy, who was then President of said railroad company, and that said county should execute and deliver to said James F. Joy, so being president as aforesaid, of said railroad company, an assignment and transfer of all right of said county to stock in said railroad company, for the nominal consideration of one dollar; and thereupon on the 5th day of November, 1869, the said county issued and delivered said bonds, and executed and delivered said transfer and assignment of stock, as required by said railroad company, and afterwards, on the day and year aforesaid, and as part of the same transaction, said county subscribed for said stock in said railroad company; and defendant admits that said railroad company was completed and in operation from Lawrence, Kansas, to Garnett, the county seat of Anderson County, Kansas, on March 1, 1870, and has since been extended southerly, but has never been constructed from Leavenworth to Lawrence, nor to Galveston.

"And defendant states that said plaintiff had notice of all the facts above stated and averred, only by the recital on said bonds appearing on their face, and by an endorsement upon each of said bonds, whereby the said

Leavenworth, Lawrence & Galveston Railroad Company guaranteed the payment of each and all of said bonds.

"Wherefore, this defendant says that said plaintiff ought not to have or maintain his said action against this defendant.

A. BERGEN,

Attorney for Defendant."

Endorsed No. 4311. Thomas P. Beal vs. Board of County Commissioners of County of Anderson. Amended Answer. Filed December 17, 1883.

A. S. THOMAS,

Clerk.

The facts admitted and set forth in the above answer are the same as the evidence in the present case indicates the facts to be. If, in the difficulties which existed at the time of the trial, of finding and obtaining the testimony of other witnesses, scattered and temporarily lost, the evidence is not so absolutely conclusive as it might otherwise have been, it is probable that by the time of another trial additional evidence can be procured. But we think the truth as it existed, is evident to the court; that the rulings, instructions and decisions of the Circuit Court were not based upon any supposed deficiency of the evidence to establish the facts which they were designed to prove, but upon the insufficiency of the ultimate facts themselves, however well proved, to constitute a defense. This is shown by the decision of the Circuit Court in sustaining the demurrer of plaintiff below, to the foregoing answer setting forth those facts.

The Supreme Court decided, in effect, upon the confession of the defendant in error, that the answer above copied, stated facts sufficient to constitute a defense, and reversed the judgment of the court below. The Circuit

Court having decided these two cases on the same theory of the law in each case, we submit that if the judgment below in case No. 4311 of that court—No. 1273 of the October term, 1883, of this court—ought to have been reversed, as it was, the judgment also in the present case ought to be reversed. If that case had been decided in this court against the plaintiff in error, and the demurrer to its answer had been sustained, either by its consent or without it, it would have been concluded not only as to that case, but also as to this; and we can perceive no good reason why the same rule should not be applied to both parties. By this formal and solemn admission in this court, and the judgment of the court thereon in that case, we submit that such judgment became not only the law of that case, but also the law of this case, which is prosecuted upon coupons of the same bonds, by the same plaintiff and against the same defendant.

A. BERGEN,
Topeka, Kansas,
Attorney for Plaintiff in Error.

113-227

FILED
JAN 9 1885
JAMES H. McKENNEY,
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

THE BOARD OF COUNTY COMMISSIONERS OF ANDERSON COUNTY,
Plaintiff in Error,
vs.
THOMAS P. BEAL,
Defendant in Error.

NO. 851.

BRIEF FOR DEFENDANT IN ERROR.

WALLACE PRATT,
JEFFERSON BRUMBACK,
Counsel for Defendant in Error.

Peter H. Tiernan, Printer and Binder, Kansas City, Mo.

Court having decided these two cases on the same theory of the law in each case, we submit that if the judgment below in case No. 4311 of that court—No. 1273 of the October term, 1883, of this court—ought to have been reversed, as it was, the judgment also in the present case ought to be reversed. If that case had been decided in this court against the plaintiff in error, and the demurrer to its answer had been sustained, either by its consent or without it, it would have been concluded not only as to that case, but also as to this; and we can perceive no good reason why the same rule should not be applied to both parties. By this formal and solemn admission in this court, and the judgment of the court thereon in that case, we submit that such judgment became not only the law of that case, but also the law of this case, which is prosecuted upon coupons of the same bonds, by the same plaintiff and against the same defendant.

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Topeka, Kansas,

Attorney for Plaintiff in Error.

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THE BOARD OF COUNTY COMMISSIONERS OF ANDERSON COUNTY,
Plaintiff in Error,
vs.
THOMAS P. BEAL,
Defendant in Error.

Error to the Circuit Court of the District of Kansas

STATEMENT OF CASE FOR DEFENDANT IN ERROR.

This suit involves the validity of 200 bonds of $1,000 each, issued by Anderson county, Kansas, to the Leavenworth, Lawrence & Galveston Railroad Company, to pay for $200,000 of the stock of the Railroad Company subscribed for by the county.

There was a jury trial, at which the Court directed a verdict for Beal, plaintiff below. The correctness of this direction is the matter for consideration by this Court, and three points are presented to be decided in the light of the evidence:

1. Was thirty days' notice given of the special election to vote on the proposition to subscribe for stock of the Railroad Company and pay therefor in bonds, and if not, is Beal, under the evidence, therefore to be defeated?

2. Is Beal, under the evidence, to be defeated because the bonds on their face recite that they were issued pursuant to a statute which was in fact repealed?

3. Is Beal, under the evidence, to be defeated on the ground that the Railroad Company fraudulently acquired the right of the county to the $200,000 of stock for $1.

The bonds are dated January 1, 1870, and are duly signed and sealed and payable to the Leavenworth, Lawrence & Galveston Railroad Company, or bearer, on January 1, 1900, at the Farmers' Loan & Trust Company Bank, in the City of New York, with interest at seven per cent per annum, payable annually on January 1st of each year, according to and on surrender of the coupons, which latter are duly signed and payable to the Railroad Company, or bearer, at same place.

The suit is on the coupons from ninety bonds maturing January 1, 1881, and January 1, 1882.

The amended petition on which the case was tried, among other things, avers that each bond erroneously recited that: "This bond is executed and issued under the provisions of and "in conformity to an act of the Legislature of the State of "Kansas, approved February 26, 1866, entitled 'An act to "authorize counties and cities to issue bonds to railroad com-"panies, approved February 10, 1865,' and in pursuance to "the vote of the electors of Anderson county of September "13, 1869."

That it was executed and issued under the provisions of and in conformity to the laws of the State of Kansas then in force, and in pursuance to the vote of the electors of Anderson county of September 13, 1869, at an election duly ordered and held for that purpose; that it was made and issued in payment of a subscription theretofore made by said county to the capital stock of Leavenworth, Lawrence & Galveston Railroad Company, a railroad corporation duly created and existing under the laws of the Territory and State of Kansas; that after issue and on March 27, 1882, it was duly registered in the office of the Auditor of the State of Kansas; that, as each coupon falling due prior to January 1, 1881, matured, the same

was paid by the county with the proceeds of a tax levied and collected each year by said county from the tax-payers for the purpose; and that after such registration, and before the coupons sued on matured, they came to and for value became the property of Beal. (P. R., 7.)

The answer of the county is very long. It is broad enough to let in the proofs actually adduced at the trial and to raise the three points above mentioned. There is attached to and made a part of the answer, as exhibit "A," the order of the Board of County Commissioners of August 11, 1869, to submit to the voters of the county the proposition to subscribe for the stock and pay in bonds at a special election to be held on September 13, 1869; also, as exhibit "B," the order of the Board of November 5, 1869, to subscribe for the stock and issue the bonds and sell the stock to the Railroad Company for one dollar. These exhibits will be set out in the statement of the proofs. The answer admitted that there was at the special election held on September 13, 1869, a majority vote in favor of the proposition. It is not deemed necessary to abstract the answer to present the case clearly and intelligibly.

The reply to the anwer was a general denial.

The Bill of Exceptions sets out all the proofs.

Beal first read in evidence one bond, with all indorsements, and the coupons sued on. One bond and one coupon with ~~endorsements thereon~~, omitting numbers, ran thus:

"COUNTY OF ANDERSON,

"UNITED STATES OF AMERICA, STATE OF KANSAS.

BOND.

"*Know all Men by these Presents*, That the County of Anderson acknowledges to owe and promises to pay Leavenworth, Lawrence & Galveston Railroad Company, or bearer, One Thousand Dollars, lawful money of the United States of America, on the first day of January, in the year of our Lord one thousand nine hundred, at the Farmers' Loan and Trust Company Bank in the City of New York, with interest at the rate of seven per cent. per annum, payable annually on the first day of January in each year on the surrender of the annexed coupons as they severally become due.

"This bond is executed and issued under the provisions of

and in conformity to an act of the Legislature of the State of Kansas, approved February 26th, 1866, entitled 'An Act to Amend an Act entitled an Act to Authorize Counties and Cities to issue Bonds to Railroad Companies,' approved February 10th, 1865, and in pursuance to the vote of the electors of Anderson County, of September 13, 1869.

"In testimony whereof the Board of County Commissioners of the said County of Anderson caused these presents to be signed by the Chairman of said Board and by the Clerk of the County, and to be sealed with the seal of said County, and to be registered by the Treasurer of said County. Dated January 1st, 1870. H. CAVENDER, Chairman.

J. H. WILLIAMS, Clerk.

A. SIMMONS, Treasurer.

{SEAL OF COUNTY.}

"COUPON.

"*State of Kansas.*

"The County of Anderson will pay to the Leavenworth, Lawrence & Galveston Railroad Company, or bearer, at the Farmers' Loan and Trust Company's Bank, in the City of New York, on the first day of January A. D. 1882, Seventy Dollars interest due on their bond.

"J. H. WILLIAMS, County Clerk."

Beal next read in evidence copies from the records of the Board of County Commissioners of the County, including the exhibit A, made part of the answer, as follows, to-wit:

Under date of August 11th, 1869, as follows:

"Ordered by the Board, that a special election be held in the several voting precincts in the County of Anderson on Monday, September 13th, 1869, whereat shall be submitted to the qualified voters, electors of said county for adoption or rejection the following proposition, to-wit: Shall the County of Anderson subscribe $200,000 to the capital stock of the Leavenworth, Lawrence & Galveston Railroad Company, and issue the bonds of the county in payment thereof? Said bonds payable thirty years after their date, bearing interest at the rate of seven per cent per annum, payable annually, said bonds to bear date of January 1, 1878, and to be issued and delivered to said Railroad Company on the 1st day of January, A. D.

1870, and before that time if said railroad shall on or before that time complete its line of railway to the town of Garnett, in said county, and if said line of railway shall not be completed thus far by that time, then said bonds to be issued and delivered when said line of railway is completed to the town of Garnett, in said county. Provided, the County of Anderson be released from all propositions or votes taken to subscribe stock and issue bonds to said railroad company. Electors desiring to vote on the above proposition shall have their tickets written or printed as above, and shall add thereto for or against the subscription of stock to the Leavenworth, Lawrence & Galveston Railroad Company, as the electors may desire to vote.

H. CAVENDER, Chairman.
REUBEN LOWRY, Member.

Attest: J. H. WILLIAMS, Clerk."

Also as follows, to-wit:

"COUNTY CLERK'S OFFICE,
GARNETT, Anderson Co., Kan., Sept. 17, 1869.

"Board of County Commissioners met pursuant to law for the purpose of canvassing returns of election held in said county on the 13th day of September, 1869, for the purpose of voting upon a proposition to vote stock to certain railroad companies. Present, H. Cavender, Chairman; J. B. Lowry, members, and we find the vote as follows:

"Proposition to vote bonds to Leavenworth, Lawrence & Galveston Railroad Company:

	For the Bonds.	*Against the Bonds.*
Jackson Township there were in favor of bonds....	23	
Against bonds.....		40
In Ozark Township—For bonds.....	7	
Against.....		32
In Walker Township—For bonds.....	104	
Against.....		32
In Washington Township—For bonds.....	28	
Against.....		6
In Monroe Townphip—For bonds.....	389	
Against.....		16
In Reader Township—For bonds.....	..	
Against.....		246
	551	372

We hereby certify that the proposition to subscribe stock to the Leavenworth, Lawrence and Galveston Railroad Company received five hundred and fifty-one votes, and that there were three hundred and seventy-two votes against said proposition.

H. CAVENDER, *Chairman.*
J. B. LOWRY, *Member.*

Attest: J. H. WILLIAMS, *Clerk.*

Also the following:

"COUNTY CLERK'S OFFICE,
GARNETT, July 8, 1870.

"Board of County Commissioners met pursuant to adjournment. Full quorum present. Minutes of preceding meeting read and approved.

WHEREAS, On the 5th day of November, A. D. 1869, the Board of County Commissioners of Anderson county, State of Kansas, did formally issue to the Leavenworth, Lawrence and Galveston Railroad Company the bonds of Anderson county to the sum of $200,000 according to the provisions of the vote of the electors of said county, and did place the said bonds in the hands of James F. Joy, to be delivered to said Railroad Company when the said Railroad should be completed to the town of Garnett; said bonds to bear interest at the rate of seven per cent. per annum from the 1st day of January, 1870, but in case said Railroad should not be completed to Garnett by the 1st day of January aforesaid the interest accruing upon said bonds from said first day of January, 1870, to the the time said road should be completed to said town of Garnett should be cancelled; and,

WHEREAS, On the 8th day of July, 1870, M. R. Baldwin, Supt. of said L., L. & G. R. R. Co., did certify to this Board that said Railroad was completed, equipped and operated to the town of Garnett on the 1st day of March, 1870;

Therefore, this Board do authorize the said James F. Joy to deliver said bonds to said Railroad Company upon returning the coupons of said bonds and the amount of interest accrued upon said bonds between the first days of January and March, 1870, to the Treasurer of Anderson county.

Minutes read and approved. On motion Board adjourned to meet on Tuesday, July 19, 1870, at 9 a. m.

GEO. W. ILER,
Chairman of the Board of County Commissioners, Anderson County, Kansas.
Attest: J H. WILLIAMS, *Clerk.* [Seal.]

COUNTY CLERK'S OFFICE,
ANDERSON COUNTY, KANSAS, Sept. 5, 1870.

Being the first Monday of September, 1870, Board of County Commissioners met pursuant to law. Present, Geo. W. Iler, Chairman; J. B. Lowry and J. W. Vaughn. Met for the "pursuant" of levying taxes for the year 1870, at which time the following taxes were levied to be collected for the year 1870, to-wit: On all taxable property of said county the sum of four mills per dollar on all taxable property of said county for road purposes. It is hereby ordered that there be levied on the taxable property of Anderson county the sum of seven and one-half mills per each dollar to pay ten months' interest on the bonds of said county issued to the Leavenworth, Lawrence and Galveston Railroad Company for the year 1870, the two months' interest from January 1, 1870, to March 1, 1870, having been agreed upon between said Railroad Company and the Board of County Commissioners to be canceled. Iler and Vaughn for the levy. J. B. Lowry enters his protest as follows:

The undersigned, Commissioner of Anderson county, protests against the action of the Board majority of said county in the matter of the levying of taxes for the payment of the interest ~~on the~~ L., L. & G. R. R. bonds for the following reasons to-wit:

Said bonds are not legally in the hands of said Railroad Company, if in the hands of said Railroad Company at all.

J. B. LOWRY,
Member of the Board of County Commissioners of Anderson County.
Attest: J. H. WILLIAMS, *Clerk.*
[Seal.] (P. R. pages 22-3-4.)

Beal next read in evidence copy of the registration of the bonds in the office of the Auditor of State of Kansas on March 27, 1872 (p. r. page 25), duly certified by the Auditor.

The demurrer of the county to this evidence was overruled and it then read in evidence the order of November 5, 1869, being Exhibit B of the answer, as follows:

"*Resolved*, That the Board of County Commissioners of Anderson county, in accordance with the vote heretofore had and taken of the electors of said county to that effect, hereby subscribes for two thousand shares of the capital stock of the Leavenworth, Lawrence and Galveston Railroad Company of one hundred dollars each, making in amount two hundred thousand dollars:

"*Resolved*, That the stock above subscribed for by this Board in behalf of Anderson county is hereby sold and transferred for and in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, to James F. Joy, President of said Railroad Company, and the Chairman of this Board is authorized to sign a transfer of said stock to said James F. Joy, and to assign the certificate for said stock issued to Anderson county by said Railroad Company, and to authorize in such assignment the necessary transfer of said stock and the books of said company."

J. C. Lindsey, County Attorney in 1868 and 1869, and for two years from 1876 to 1878, in behalf of the county testified, among other things, that a day or two after making the order of November 5, 1869, the bonds were all signed and the proper seal affixed, and a blank assignment of certificate of county's stock was executed by the ~~Commissioners~~ Chairman of the Board and the County Clerk, and the seal of the county affixed thereto; that either Elias Norris or Edward Rain was Sheriff of the county in 1869, almost certain it was Norris. He was in California and Rain at Garnett, in Anderson county. The railroad was completed to Garnett in March, 1870, and had been operated ever since. The interest coupons on the $200,000 of bonds, maturing prior to 1881, had been paid regularly as they matured by the county, which levied and collected taxes for the purpose, witness being all the time a resident and taxpayer of the county. He never took any steps

to prevent the issue of the bonds, or the payment of the interest, or to get the stock, finding, on examination, the latter was of no value. The Railroad had been sold out under foreclosure proceedings. The county subscribed for the stock and issued the bonds, and sold the stock for the purpose of getting the railroad built, and got the road. His evidence as to notice to hold the election is in detail as follows:

Q.—Captain, state your knowledge as to the time of the notice which was given before this election, held on the 13th of September, 1869.

By the Court—Have you not record evidence of that?

A. (by Bergen, attorney for Board)—No, sir.

By the Court—You may ask the witness if he has any personal knowledge of the time and manner of the publication of the notice.

Q.—Do you know how long this notice of the election, to be held on the 13th of September relative to these bonds, was published?

By the Court—Do you know of your own knowledge?

A.—Yes, sir, I do. I prepared the notice for the printer.

Q.—How long was it published?

A.—It was published twenty-four days, counting both dates.

Q.—That is the day of publication and the day of election?

A.—Yes, sir.

Q.—It was not published thirty days?

A.—No, sir.

CROSS-EXAMINATION.

Q.—You prepared the notice?

A.—I looked over the proof and made some corrections.

Q.—Were you editing or publishing any paper at that time?

A.—No, sir.

Q.—What paper was the notice published in?

A.—It was published in what was then called the Garnett Plaindealer.

Q.—Who was the editor of that paper?

A.—At that time I could not tell. They changed so often.

Q.—Can you tell who was the publisher?

A.—No, sir. They changed too frequently. I have probably a memorandum at the hotel from which I could tell.

Q.—Did you procure a copy of the notice as published, and a proof of the publication, and give it to the County Clerk or the Board of County Commissioners?

A.—No, sir.

Q.—Did you do anything with regard to such proof?

A.—I don't think anybody did.

Q.—You were the legal adviser of the county. It was your duty to do so?

A.—No, sir, I don't think it was.

Q.—It was your duty as County Attorney?

A.—It might have been if I had been called upon by the Board.

Q.—But you watched the publication every week?

A.—I noticed it incidentally.

Q.—And you say that it was published through twenty-four issues of the paper?

A.—Yes, sir; twenty-four days before the election. The paper was published weekly.

Q.—You did not think it necessary to have any other evidence of that except what was in your mind?

A.—I don't know that I gave the matter any thought at all?

Q.—You are confident this notice was published but twenty-four days?

A.—That is my recollection.

Q.—How do you figure that?

A.—Well, this order of the Board for the election was made on the night of Wednesday, and the paper was published next morning, Thursday.

Q.—That was the first publication?

A.—No. Wait a moment. Our paper was published the next morning, or that was the publication day. But, like all country papers, it was run off the day before; and there was so much to do that this notice was not ready in time for that issue, August 12th, and did not get in until the 19th, which was the first publication, and from that up to the date of the election would make twenty-four days.

Q.—You mean, then, the notice covered a period of twenty-four days?

A.—Yes, sir.

Q.—That notice was simply a publication of the order of the Board was it?

A.—Well, to give you the formula of that notice would be impossible. I don't think it was as long as this order, but I don't know.

RE-EXAMINATION.

Q.—Captain, do you know of the Sheriff having given any notice of this election?

A.—No, sir, I do not know of any proclamation being made.

The Court, at the close of proof by parties, called J. C. LINDSEY, and examined him thus:

Q.—Captain Lindsey, can you state the date of the first publication of this notice in the newspaper?

A.—As I stated before, the paper was issued on Thursday, and the order made by the Board on the night of the 11th of August, which was Wednesday, and the notice was not ready in time for that issue, but was published on the succeeding Thursday, which would make it the 19th of August. That is my recollection of it.

Q.—Where is that paper? Have you looked through the files?

A.—I have looked carefully and made inquiries everywhere from persons who would be likely to keep the files, and there is no complete file there.

Q.—Have you examined the records of the County Clerk's office?

A.—Yes, sir, and have utterly failed to find any complete file.

GEORGE M. EVERLINE, on behalf of the county, testified that he was resident of Anderson County since 1866; was not in office in 1869, but was before that, and again in 1871.

As to notice, he testified in detail thus:

IN CHIEF.

Q.—Do you know the length of time for which notice was given of the election held on the 13th of September?

A.—I have a general recollection of it; an indistinct one in connection with it.

Q.—State how long that notice was given.

By the Court—What knowledge do you have?

A.—There was considerable conversation about the matter, and I had a conversation with Mr. Cavender, who was chairman of the Board of County Commissioners, and I made a statement to him like this—

By the Court—I am afraid that is not competent. It must be something within your knowledge.

Q. (By the Court)—If you have knowledge of it, state it.

A.—I evidently had knowledge of it at the time from what I said to him.

By Mr. Pratt (counsel for plaintiff)—We object. (To witness:) The question is whether you had knowledge of the length of time for which the notice was published.

Witness—I don't know exactly how to answer that question. As a matter of course I don't remember having looked over the files of the paper or anything of that kind.

Q. (By the Court)—Did you have any knowledge, then, of the length of time it was published?

A.—Yes, sir.

Q.—Then what is your recollection of the length of time notice was given?

A.—Twenty days' notice. As a matter of course it ran over one or two days, making twenty-one or twenty-two days.

Q.—No more?

A.—No more.

CROSS-EXAMINATION.

Q.—You refer to the publication in the newspaper, do you?

A.—Yes, sir.

Q.—Which newspaper was it published in?

A.—The Garnett Plaindealer.

Q.—In any other paper?

A.—No, sir.

Q.—How many publications were there?

A.—Three.

Q.—But three?

A.—But three.

Q.—The first one on what day of the month?

A.—That I can only answer from the date of the order. The first publication, as I remember it, was on the 18th day of August.

Q.—And there were but three publications?

A.—Yes, sir.

Q.—Hence you say but twenty days?

A.—Yes, sir. I may be mistaken about that.

Q. (By Court)—Was there any notice but that in the newspaper of this election?

A.—I don't know of any other.

Q. (By Mr. Pratt)—In other words, you don't know anything about that?

A.—Yes, sir.

Q.—You are not sure about that?

A.—I am sure about the numbers, but I am not positive when the first one was.

J. T. LAWTER, on behalf of the county, testified he had lived in the county twenty-six years, including 1869; that Elias Norris had moved to California some time before—could not say exactly when—and had not seen him since; had not seen J. H. Williams, the County Clerk in 1869, for six or eight years; heard a rumor he had gone to Texas, and then that he was down in Missouri somewhere; I don't know where he is. As to three Commissioners in 1869, he said that J. B. Lowry was dead; that Henderson Cavender was not a resident of Anderson county; had been told he lived somewhere on the Missouri line; did not know his postoffice address; that Reuben Lowry was a resident of the county. "He is very "old and feeble and infirm, and I hardly considered him com-"petent to know anything about what happened at the time."

The stock of Anderson county was assigned to Joy by a printed assignment on a blank certificate of stock. The blank was one of those usually used.

The county then rested.

Beal then read the depositions of J. S. Ford, who testified that Anderson county paid him when due the coupons of January 1, 1879, and January 1, 1880, from the same ninety bonds from which the coupons in suit were cut, bonds Nos. 21 to 60 both inclusive, 68 to 97 both inclusive, 181 to 200 both inclusive. He got the coupons of other parties, generally of Charles Merriam, of Boston, but once from Hubbard Brothers, bankers and brokers, of Boston. Merriam and Hubbard Brothers, as agents, sent the coupons paid for collection on account of the owners. "Mr. Beal's name was "given as the owner of these coupons, that is, the coupons "were sent for collection for account of Mr. Beal."

Beal next read the deposition of Wyllys C. Ransom, as follows:

"My age is fifty-three years; residence Lansing, Ingham county, Michigan. I was Auditor and Assistant Treasurer of the Leavenworth, Lawrence and Galveston Railroad Company from the first day of September, A. D. 1869, to the first day of January, 1875. Anderson county, Kansas, issued bonds to said Railroad Company dated January 1, 1870. My recollection is that there were one hundred and fifty bonds, each for $1,000, and having thirty years to run to maturity, with interest coupons attached. While the Railroad Company held the bonds, I, as Assistant Treasurer, had them registered in the office of the Auditor of State of Kansas, in the latter part of March, 1872, pursuant to the statute of Kansas shortly before that time enacted, providing for the registration of bonds of this character. I think D. W. Wilder was Auditor of said State of Kansas, and his official stamp, showing exact date of registry, will be found on the bonds. That thereupon the Railroad Company sold and delivered the bonds for full value to various parties, and used the proceeds of sale."

The cross-examination disclosed the names of some purchasers, but did not change the general result.

POINTS AND AUTHORITIES FOR BEAL.

I.

Due legal notice of the special election was given.

The act of February 26, 1866, referred to in the bonds will be found in the "Laws of Kansas, 1866," page 72, and following. The following is quoted from the first section of this act.

"SECTION 1. That Section 1 of 'An act to authorize counties and cities to issue bonds to railroad companies,' approved February 10, 1865, be amended to read as follows: 'Section 1. That the board of county commissioners of any county to, into, through, from or near which, whether in this State or any other State, any railroad is or may be located, may subscribe to the capital stock of any such railroad corporation, in the name and for the benefit of such county, not exceeding in amount the sum of $300,000 in any one corporation, and may issue the bonds of such county in such amounts as they may deem best in payment of said stock; provided * * * But no such bonds shall be issued until the question shall be first submitted to a vote of the qualified electors of the county at some general election or at some special election to be called by the board of county commissioners, by first giving twenty days' notice in some newspaper published and having general circulation in the county, or in case there be no paper published in the county, then by written or printed notices posted up in each election precinct twenty days previous to the day of such election, and in submitting said question said board of commissioners shall direct in what manner the ballots shall be cast * * * '"

Pursuant to the act of February 18, 1867, the statutes of Kansas were revised, and the result is "General Statutes of Kansas, 1868." Article 6, of chapter 23, of this revision relates to railway corporations, and sections 51, 52 and 53, pages 203 and 204, supersede and take the place of the act of February 26, 1866. Section 53 need not be looked at. Sections 51 and 52 are as follows:

"SECTION 51. The Board of County Commissioners of any county, the City Council of any city, or the trustees of any incor-

porated town, may take stock for such county, city or town in, or loan the credit thereof to, any railway company duly organized under this or any other law of the State; but a majority of the qualified voters of such county, city or town must, at a regular or special election to be held therein, first assent to such subscription before it can be made.

"SEC. 52. A special election may be ordered by the County Board of any County, the City Council of any city, or the corporate authorities of any town or village, at any time, for the purposes of ascertaining the sense of the voters of such county, city, town or village, as prescribed in the preceding section. Notice shall be given of such election at least sixty day before the holding of the same."

Chapter 119 of the "General Statutes of Kansas," 1868, page 1,122 and following, prescribes what statutes shall constitute the general statutes of the State, and be in force. This chapter operated to repeal the act of February 26, 1866. As this is conceded, nothing need be quoted to sustain the proposition.

By act of the Legislature of Kansas, taking effect February 27th, 1869, sections 51, 52 and 53, article 6, chapter 23, of the "General Statutes of Kansas, 1868," were amended and the original sections expressly repealed, as both sides concede. The sections as amended read as follows:

"SECTION 51. The Board of County Commissioners of any county, the City Council of any city, or the Trustees of any incorporated town, may subscribe for and take stock for such county, city or town in, or loan the credit thereof to, any railway company duly organized under this or any other law of the State or Territory of Kansas, upon such conditions as may be prescribed by the aforesaid county, city or town authorities. Provided, however, that a majority of the qualified voters of such county, city or town voting upon such question of subscribing and taking stock shall at a regular or special election to be held therein, first assent to such subscription and the terms and conditions prescribed as aforesaid, upon which the same shall be made; and provided further, that when such assent shall have been given to such subscription as aforesaid,

it shall be the duty of said county, city or town authorities to make such subscription.

"SEC. 52. A special election may be ordered by the County Commissioners of any county, the City Council of any city or the corporate authorities of any town, at any time, for the purpose of ascertaining the sense of the voters of such county, city or town as contemplated in the preceding section. Notice of such election shall be given at least thirty days before the holding of the same, and the question or questions to be submitted thereat shall be set forth in such notice.

"SEC. 53. Upon the making of such subscription, such county, city or town shall thereupon become, like other subscribers to such stock, entitled to the privileges granted and subject to the same liabilities imposed by this act, or by the charter of the company in which such stock is taken, except as the same may be varied and limited by the terms and conditions upon which the said subscription shall have been authorized and made, and it shall be the duty of the Board of County Commissioners, or the City Council or Trustees of the town making such subscription aforesaid, to pay for the same and the stock thereby agreed to be taken by such county, city or town by issuing to the company entitled thereto the bonds of such county, city or town at par, payable at a time to be fixed, not exceeding thirty years from the date thereof, bearing interest at the rate of seven per cent per annum, with interest coupons attached."

We understand that plaintiff in error, on page 16 of its brief, claims, that by reason of the act of February 26, 1866, and General Statutes, 1868, page 404, section 5 of chapter 36, notice must have been published in a newspaper. The law of 1866 did not govern as to manner of giving notice, nor in any other respect, for the simple reason that it had been wholly repealed in 1868.

Chapter 36 of General Statutes of Kansas, 1868, contains five articles and one hundred and seven sections, in main act of March 3, 1868, and six sections in the act of February 26, 1869, at end of the chapter.

Section 5, relied on by the county, is as follows:

"SECTION 5. It shall be the duty of the sheriff, and he is here-

by required, fifteen days at least before the holding of any general election, or ten days before the holding of any special election, to give public notice by proclamation throughout his county of the time of holding such election, *and the officers at that time to be chosen*, one copy of which shall be posted at each of the places where elections are appointed to be held, and inserted in some newspaper published in the county, if any be published therein."

Assume that the sheriff was to give thirty days' notice in the manner prescribed by Section 5, the case shows notice according to law. No statute provided for the making of any record of the fact of giving notice or of the form thereof, or of the time or manner of giving the same. There was no documentary evidence whatever at the trial respecting this notice. The sheriff who gave it was alive but not called. Neither the editor nor publisher of the newspaper in which it was inserted was called or accounted for; two members of the Board concerned in the business were alive, but neither of them were called or even spoken to on the subject.

The County Attorney and one other citizen of the county testified for the county, but knew absolutely nothing material. The order was made on Wednesday, August 11. The regular publication day of the paper was the next day. The attorney reasons that the paper was run off the day before its publication day, and there was not time to get the notice in the issue of the 12th, though he admits he never examined the paper. Neither he nor the other witness pretended to know anything as to what the Sheriff did in the matter of posting up notices at the places of holding elections.

The evidence is wholly unreliable and unsatisfactory, and the Court below did right in holding that it failed to show that notice was not given.

On the other hand, the evidence adduced at the trial can leave no doubt of the giving of the thirty days' notice required by the law of 1869. There was time to give it in both the modes specified in the general election law. The Sheriff actually gave notice, as the county proved. The presumption of fact is that he performed his duty. The Board of Commissioners were to and did make a proper order for holding

the election, and were to and did ascertain the result, finding specifically the number of votes for and against the proposition submitted, and the majority in favor of the proposition. On finding such assent, it became the duty of the Board, under the last part of section 51, as amended in 1869, to subscribe the stock and issue the bonds, and it did so by and according to the order of November 5, 1869. The action of the Board is evidence against the county. This Court, in Commissioners vs. January, 94 U. S. R., 205-6, speaking of like action by a Board of County Commissioners under this act of 1869, say:

"They" (the Board) "were thus constituted a tribunal "for the adjustment of all questions touching the subject. "They were clothed with the power and charged with the "duty to decide them. * * * Their issuing the bonds was "the reflex and embodiment of their judgment that it was "proper to do so. It implies a prior determination to that effect. "The fact carries with it this presumption. * * * As be- "tween the county and a bona fide holder no question in- "volving the infirmity of the securities can be raised."

Ransom's evidence shows the sale of the bonds for full value by the Railroad Company in 1872.

Pana vs. Bowler, 107 U. S. R., 529.
Montclair vs. Ramsdell, 107 U. S. R., 147, 157.

In Thacher & Stephens vs. Jefferson County, 13 Kansas R., 188, the Court say: "In fact the County Commissioners "are the general officers or agents of the county. And when- "ever any duties are imposed upon the Commissioners by "law, it should be presumed that such duties are imposed "upon the Commissioners as the agents of the county, unless "the contrary clearly appears."

In Campbell vs. Broden, 31 Kansas R., 757, the Court say: "Presumptively the election was valid. Presumptively "the canvass of the Board of County Commissioners was "regular and legal and valid." The Court went farther by presumption to uphold an election than is asked here.

The county subscribed the stock, got the railroad, issued the bonds, which were sold for full value, paid interest for

ten years. Every officer of the county who had anything to do with the business acted as though the election was regularly held.

The action of the county is very strong evidence of the regularity of the election in all respects, including the giving of notice thereof—just as strong as if the Board, in canvassing the vote on September 17, 1859, had expressly found that notice was giving according to law.

In Turner vs. Commissioners of Woodson County, 27 Kansas, 314 and 318, an attempt was made to enjoin the issue of bonds voted to induce the building of a railroad, on the ground that the township voted to issue more bonds than could be legally issued, and therefore the vote was a nullity, and there was no power to issue any bonds. The Court enjoined the issue of any bonds in excess of the amount legally issuable, but held that up to that limit the issue should be made, saying: "Obviously the township wanted the railroad, "was willing to incur the indebtedness, and whether wisely "or not, it offered the inducement of its subscription to the "railroad company for the sake of obtaining the railroad. "Having made this offer, and the railroad company having acted "upon it, and expending its money in the construction of its road, "we see no legal reason for relieving the township of the obli-"gation it thereby proffered to assume to the company."

The County is estopped by the recitals of the bonds from denying the giving of proper notice of the Election.

"Porter Township is estopped "by the recitals in the bonds from saying "that no township Election was held or "that it was not called and conducted "in the particular mode required "by law."

Northern Bank vs Porter Township

110 U.S. 608, 619

II.

If the general election law, chapter 36, General Statutes, 1868, determines how and by whom the notice of election was to be given, the publication of notice in the newspaper twenty-four days instead of thirty days does not vitiate the bonds. It was a mere irregularity which did not render the election a nullity.

Section 29 of chapter 36 (General Statutes, 1868, page 411), provides: "Whenever it shall satisfactorily appear that "any person has received the highest number of votes for any "office, such person shall receive the certificate of election, "notwithstanding the provisions of the law may not have been "fully complied with in *noticing and conducting the election*, "so that the real will of the people may not be defeated by "any informality of any officer." This section applies to this election as much as the section defining the duty of the sheriff as to giving notice, and closes the question on the theory of the county that chapter 36 applied in this case. In Wildman vs. Anderson, 17 Kansas R., 349, this section was applied.

The same result must be reached if this section does not apply. The holding of an election and the assent of a majority of the voters to the taking of stock, and the issuing of bonds are essential, because section 51, as amended in 1869, makes these things so by prescribing that the Board may subscribe, etc., "provided, however, that a majority of the qualified voters voting, etc., assent," etc. The next section, 52, authorizes the ordering of a special election, and provides "Notice shall be given at least thirty days before the holding of the same, and the question or questions to be submitted thereat shall be set forth in such notice."

There may be special elections as well as general elections, for electing officers, under chapter 36, section 5, quoted in last point, and the duty of the Sheriff to give notice thereof, and of the officers to be elected, is just as imperative as was the duty to give notice of the special election on September 13th, 1869. In the election of officers at a general or special election without any notice in the newspaper or by posting, the proceedings would not be void except in very extreme cases.

An old officer could not hold over on the ground that the election was a nullity, and so no successor had been duly elected. The failure to post a notice at one voting place in time, or the posting of one that by some mistake might omit something that should have been in would not have rendered the election null. The will of qualified electors is not to be defeated by such irregularities, nor is any one who has, under the circumstances of this case paid full value for these bonds to lose on account of the irregularity complained of on the part of a ministerial officer. There is no pretence that any voter of the county did not have an actual notice of the election, or in fact vote; no objection that anything was done on the day of election contrary to law, or that the election was not held at the proper place and during the proper hours. This is not a case of failure to give any notice. Commonwealth vs. Smith, 132 Mass. R., 289, a case of defective notice of election, states the principles to govern here, and refers to the authorities. In Foster vs. Scarff, 15 O. St. R. 532, 537, the Court held an election *without any notice* invalid, but said: "We do not "intend to hold, nor are we of opinion, that the notice by "proclamation as prescribed by law, is, *per se*, and in all sup- "posable cases, necessary to the validity of an election. If "such were the law it would be in the power of a ministerial "officer, by his misfeasance, always to prevent a legal election. "We have no doubt that where an election is held in other "respects as prescribed by law and notice in fact of the elec- "tion is brought home to the great body of the electors, though "derived through means other than the proclamation which the "law prescribes, such elections would be valid."

The State vs. Metzger, 26 Kansas R., 396, was a proceeding by mandamus to compel officers of a school district to issue bonds, the defense being that there was an irregularity in the conduct of the election to authorize the issue of the bonds, the Court held the defense bad, saying, "Generally, whenever it "can be ascertained what the real will and intention of the "voters are, the election is valid, however many irregularities "may intervene. In this case we think the election was valid, "and that the issue of the bonds was properly authorized, "and that it is the duty of the defendant to unite with the other "officers of the district in issuing the bonds." Cases cited.

III.

The erroneous recital in the bonds of the repealed law does not vitiate them. The same kind of a mistake in bonds issued under the act of 1869 was considered by this Court in Commissioners of Johnson County vs. January 94 U. S., 202 The mistake was that of the county, not at all that of the railroad company. All the orders and actions of the Board up to and including that of November 5, 1869, subscribing the stock and issuing the bonds, were correct and did not refer to the repealed statute. Everything as to the election could have been done according to the law in force, and the action of the Board prior to the signing of the bonds was strong evidence that it had been so done, and is not to be overturned by the mere mistake at the end of the business in the form of the bonds. The case does not stand at all on the false recital in the bonds. The whole facts are before the Court, and it is not necessary to decide what the presumption would be if the only evidence was the bonds. The proof outside of the bonds

shows them good in fact, and the blunder of the county does not make them bad, nor cast on the holder of the bonds the burden of making any more proof respecting the election than was made.

Bernardo Township vs. Stebbins 109 U.S.R. 341
Smith vs County of Clark 54 Mo 71
Dallas Co " McKenzie (end of opinion) 110 U.S.R. 688

IV.

The sale of the stock by the county for one dollar does not vitiate the bonds for fraud, nor show them without consideration. This point is decided in Commissioners vs. Thayer, 94 U. S., 635 and 643, where the county sold its stock for one dollar; also by the Supreme Court of Kansas, Railroad Company vs. Commissioners of Miami County, 12 Kansas, 482, 489, 491. L., L. & G. R. R. Co. vs. Commissioners of Douglass County, 18 Kansas, 182-3, 186–7, where all sorts of fraud were charged.

The statutes bearing on this point are as follows, General Statutes, 1868, page 253:

"SECTION 1. Each organized county within this State "shall be a body corporate and politic, and as such shall be

"empowered * * Third, to sell and convey any real or "personal estate owned by the county, and make such order "respecting the same as may be deemed conducive to the "interests of the inhabitants."

"SEC. 2. Any real or personal estate heretofore, or "which may be hereafter, conveyed to any county shall be "deemed the property of the county."

Page 254: "Section 3. The power of a county as a body "politic and corporate shall be exercised by a board of "county commissioners."

Page 256: "Section 16. The board of county commis- "sioners of each county shall have power at any meeting, "First, to make such orders concerning the property belong- "ing to the county as they may deem expedient; * * "Fifth, to represent the county and have the care of the "county property, and the management of the business and "concerns of the county, in all cases where no other provision "is made by law. * * Eleventh, to perform such other "duties as are or may be prescribed by law."

There is nothing in the point of the county that the question here is "*res adjudicata*." No question of that kind arises on the record here, or can arise. The suit No. 4311, mentioned in the sixth point of the brief of plaintiff in error, was brought after this suit on the coupons of January 1, 1883. The county answered and Beal demurred to that answer, and the court below sustained the demurrer. When the case got into this Court on a writ of error to reverse judgment on the demurrer, the counsel of Beal in this Court, on studying the answer, concluded that, on its face, the same showed a defense, and that the Circuit Court erred in sustaining the demurrer. He so stated to the Court, and the Court as a matter of course reversed the judgment below without looking at the record, without knowing the precise ground for statements of counsel, and without any consideration.

The questions arising on the demurrer to the answer in 4311 are very different from those arising on the record here. The answer denied the existence of facts which were proved on the trial in this case, and the true merits as to the validity